TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1910.

No. [redacted]215

ATLANTIC COAST LINE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

RIVERSIDE MILLS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED MAY 6, 1910.

(21,650.)

(21,650.)

SUPREME COURT OF THE UNITED STATES.

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No. 441.

ATLANTIC COAST LINE RAILROAD COMPANY, PLAINTIFF IN ERROR,

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RIVERSIDE MILLS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

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1 In the Circuit Court of the United States for the Northeastern Division of the Southern District of Georgia.

RIVERSIDE MILLS
versus
ATLANTIC COAST LINE RAILROAD COMPANY.

Writ of Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the United States Circuit Court for the Northeastern Division of the Southern District of Georgia, Greeting:

Because in the records and the proceedings, as also the rendition of the judgment of a plea which is in the said United States Circuit Court before you, or some of you, between Riverside Mills, Plaintiff, and the Atlantic Coast Line Railroad Company, defendant, a manifest error hath happened, to the great damage of the said Atlantic Coast Line Railroad Company, as by its complaint appears. We being willing that error if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 2nd day of April, in the year of our Lord one thousand nine hundred and nine.

2 (Signed) W. H. GODWIN,
Deputy Clerk of the United States Circuit Court for the Northeastern Division of the Southern District of Georgia.

The foregoing Writ of Error allowed this 2nd day of April, 1909.

(Signed) By EMORY SPEER, *Judge.*

Endorsement: United States Circuit Court, Northeastern Division, Southern District of Georgia. Riverside Mills versus Atlantic Coast Line Railroad Company. Writ of Error, etc., filed in office this April 3rd, 1909, at 10 o'Clock, A. M., W. H. Godwin, Deputy Clerk.

3 *Complaint.*

In the Circuit Court of the United States for the Northeastern Division of the Southern District of Georgia.

RIVERSIDE MILLS, a Corporation,
versus
ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation.

Complaint.

To the Honorable the Judges of the Circuit Court of the United States for the Fifth Circuit:

The petition of the Riverside Mills, a corporation, respectfully shows:

1st. That the petitioner, Riverside Mills, is a corporation duly organized and existing under the laws of the State of Georgia, with its principal office and place of business in the City of Augusta, County of Richmond, State of Georgia.

2nd. That the Atlantic Coast Line Railroad Company is a corporation duly organized and existing under the laws of the State of Virginia.

3rd. That the Atlantic Coast Line Railroad Company is operating a line of railway extending from the City of Augusta within the State of Georgia to the City of Richmond in the State of Virginia, with divers branches in other states of the United States, and in operating said line of railroad, is and was at all times hereinafter mentioned, common carriers engaged in interstate commerce within the true intent and meaning of the Act of Congress of the United States governing and regulating interstate commerce.

4th. That the said Atlantic Coast Line Railroad Company is indebted to your petitioner in the sum of Nine dollars and sixty cents, ($9.60). For that on the 15th day of September, 1906, your petitioner delivered to the said Atlantic Coast Line Railroad Com-
4 pany, the said articles; to wit: Twenty Bales (20) No. 1 S. White Waste, 2456 pounds of the value of One hundred and eighty-seven dollars and fifteen cents, ($187.15); said goods were consigned to the Chesapeake Steamship Company, Baltimore, Maryland, and for said Goods the said Atlantic Coast Line Railroad Company issued to your petitioner bill of lading, and that your petitioner is now the owner and holder of said bill of lading, and that the said Atlantic Coast Line Railroad Company then and there as the initial carrier undertook and agreed to transport and deliver said goods to said Chesapeake Steamship Company at Baltimore, Md., said goods being then and there an interstate shipment.

a. But although it then and there became the duty of the said defendant company to transport and deliver said goods to the consignees at Baltimore, Maryland, said defendant company has failed to transport and deliver the same to the consignees as aforesaid, but out of said shipment have only delivered nineteen (19) bales No. 1

S. White Waste of the value of one hundred and seventy-seven dollars and fifty-five cents, ($177.55.) although a reasonable time for such delivery has long since elapsed.

b. That said defendant Company has failed and refused either to deliver said goods to the said consignees or to pay your petitioner the value thereof, as they are bound to do under the Act of Congress regulating commerce, to the injury and damage of your petitioner in the sum of nine dollars and sixty cents ($9.60).

5th. That the said Atlantic Coast Line Railroad Company is indebted to your petitioner in the sum of Thirty five dollars and eighty four cents, ($35.84). For that on the 20th day of March 1907, your petitioner delivered to the said Atlantic Coast Line Railroad Company, the said articles; to wit: One bale (1) C. Special Cold. Waste 675 po-nds of the value of thirty five dollars and eighty four cents ($35.84); said goods were consigned to W. H. Taylor and
5 Company, Allentown, Pennsylvania, and for said goods the said Atlantic Coast Line Railroad Company issued to your petitioner a bill of lading, and that your petitioner is now the owner and holder of said bill of lading, and that the said Atlantic Coast Line Railroad Company then and there as the initial carrier, undertook and agreed to deliver and transport said goods to said W. H. Taylor and Company at Allentown, Pennsylvania, said goods being then and there an interstate shipment.

a. But although it then and there became the duty of the said defendant Company to transport and deliver said goods to the consignees at Allentown, Pennsylvania, said defendant company has failed to transport and deliver the same to the consignees as aforesaid, although a reasonable time for such delivery has long since elapsed.

b. That the said defendant Company has failed and refused either to deliver said goods to the said consignees or to pay your petitioner the value thereof, as they are bound to do under the Act of Congress regulating commerce, to the injury and damage of your petitioner in the sum of Thirty five dollars and eighty-four cents, ($35.84).

6th. That the said Atlantic Coast Line Railroad Company is indebted to your petitioner in the sum of Ten dollars and nine cents, ($10.09). For that on the 3rd day of April, 1907, your petitioner delivered to the said Atlantic Coast Line Railroad Company, the said articles: to wit: Twenty bales (20) White Revellings—2237 pounds of the value of One hundred and sixty nine dollars and seventy nine cents ($169.79); said goods were consigned to Massasoit Manufacturing Company, New York, N. Y., and for said goods the said Atlantic Coast Line Railroad Company issued to your petitioner a bill of lading, and that your petitioner is now the owner and holder of said bill of lading, and that the said Atlantic Coast Line Railroad Company then and there as the initial carrier undertook and agreed to transport and deliver said goods to said Massasoit Manufacturing Company at New York, N. Y., said goods being then and there an interstate shipment.

6 *a.* But although it then and there became the duty of the said defendant company to transport and deliver said goods

to the consignee at New York, N. Y., said defendant company has failed to transport and deliver the same to the consignees as aforesaid, but out of said shipment have only delivered Nineteen bales (19) of said White Revellings of the value of One hundred and fifty-nine dollars and seventy cents ($159.70), although a reasonable time for such delivery has long since elapsed.

b. That said defendant company has failed and refused either to deliver said goods to the said consignees or to pay your petitioner the value thereof, as they are bound to do under the Act of Congress regulating commerce, to the injury and damage of your petitioner in the sum of Ten dollars and nine cents ($10.09).

7th. That the said Atlantic Coast Line Railroad Company is indebted to your petitioner in the sum of Forty-two dollars and twenty-eight cents ($42.28). For that on the 3rd day of April, 1907, your petitioner delivered to the said Atlantic Coast Line Railroad Company, the said articles, to wit: Five bales (5) Waste/576 pounds of the value of forty-two dollars and twenty-eight cents ($42.28); said goods were consigned to Walker Brothers, Brooklyn, N. Y., and for said goods the said Atlantic Coast Line Railroad Company issued to your petitioner a bill of lading, and that your petitioner is now the owner and holder of the bill of lading, and that the said Atlantic Coast Line Railroad Company then and there as the initial carrier, undertook and agreed to deliver and transport said goods to said Walker Brothers, at Brooklyn, N. Y., said goods being then and there an interstate shipment.

a. But although it then and there became the duty of said defendant company to transport and deliver said goods to the consignees at Brooklyn, N. Y.,n said defendant company has failed to transport and deliver the same to the consignees as aforesaid, although a reasonable time for such delivery has long since elapsed.

7 *b.* That the said defendant company has failed and refused either to deliver said goods to the said consignees or to pay your petitioner the value thereof, as they are bound to do under the Act of Congress regulating commerce, to the injury and damage of your petitioner in the sum of forty-two dollars and twenty-eight cents ($42.28).

8th. That the said Atlantic Coast Line Railroad Company is indebted to your petitioner in the sum of One Hundred and fourteen dollars and ninety-two cents, ($114.92). For that on the 3rd day of April, 1907, your petitioner delivered to the said Atlantic Coast Line Railroad Co., the said articles; to wit: Ten bales (10) No. 35 Stock waste, —2413 pounds of the value of one hundred and fourteen dollars and ninety-two cents; said goods were consigned to New York Cotton Batting Company, Lockport, N. Y., and for said goods the said Atlantic Coast Line Railroad Company issued to your petitioner a bill of lading, and that your petitioner is now the owner and holder of said bill of lading, and that said Atlantic Coast Line Railroad Company then and there as the initial carrier undertook and agreed to transport and deliver said goods to said New York Cotton Batting Company at Lockport, N. Y., said goods being then and there an interstate shipment.

a. But although it then and there became the duty of the said defendant company to transport and deliver said goods to the said consignees at Lockport, N. Y., said defendant company has failed to transport and deliver the same to the consignees as aforesaid, although a reasonable time for such delivery has long since elapsed.

b. That the said defendant company has failed and refused either to deliver the said goods to the said consignees or to pay your petitioner the value thereof, as they are bound to do under the acts of Congress regulating commerce, to the injury and damage of your petitioner in the sum of one hundred and fourteen dollars and ninety-two cents.

8 9th. That the said Atlantic Coast Line Railroad Company is indebted to your petitioner in the sum of forty five dollars and eighty-eigh- cents, ($45.88). For that on June 6th, 1907, your petitioner delivered to the said Atlantic Coast Line Railroad Company the said articles, to wit: Fi*b*e bales (5) No. 1. S. White Waste, —625 pounds of the *a*rlue of forty-five dollars and eighty-eight cents, ($45.88), said goods were consigned to Walker Brothers, Brooklyn, N. Y., and for said goods the said Atlantic Coast Line Railroad Company issued to your petitioner a bill of lading, and that your petitioner is now the owner and holder of the said bill of lading, and that the said Atlantic Coast Line Railroad Company being then and there the initial carrier undertook and agreed to transport and deliver said goods to said Walker Brother, at Brooklyn, N. Y., said goods being then and there an interstate shipement.

a. But although it then and there became the duty of the said defendant company to transport and deliver said goods to the said consignees at Brooklyn, New York, said defendant Company has f-iled to transport and deliver the same to the consignees as aforesaid, although a reasonable time for such delivery has long since elapsed

b. That said defendant company has failed and refused either to deliver said goods to the said consignees or to pay your petitioner the value thereof, as they are bound to do under the Act of Congress regulating commerce, to the in*f*ury and damage of your petitioner in the sum of forty-five dollars and eight--eight cents. ($45.88).

10th. That the said Atlantic Coast Line Railroad Company is indebted to your petitioner in the sum of twenty dollars and twenty-nine cents ($20.29). For that on the 25th day of June, 1907, your petitioner delivered to the said Atlantic Coast Line Railroad Com-

9 pany, the said articles, to wit: Twenty-three bales (23) of waste, —2960 pounds of the value of One hundred and ninety-five dollars and forty-four *a* cents, ($195.44) said goods were consigned to William B. Burke, Rochester, N. Y., and for said goods the said Atlantic Coast Line Railroad Company issued to your petitioner a bill of lading, and that your petitioner is now the owner and holder of said bill of lading, and that said Atlantic Coast Line Railroad Company being then and there the initial carrier, undertook and agreed to transport and deliver said goods to said William B. Burke, at Rochester, N. Y., said goods being then and there an interstate shipment.

a. But although it then and there became the duty of the said defendant company to transport and deliver to the said consignees at Rochester, N. Y., said defendant company has failed to transport and deliver the same to the consignees as aforesaid, but out of said shipment have only *have only* delivered twenty-one bales (21) of said waste of the value of One hundred and seventy-five dollars and fifteen cents ($175.15), although a reasonable time for such delivery has long since elapsed.

b. That the said defendant company has failed and refused either to deliver said goods to the said consignees or to pay your petitioner the value thereof, as they are bound to do under the Act of Congress regulating commerce, to the injury and damage of your petitioner in the sum of twenty dollars and twenty-nine cents ($20.29).

11th. That the said Atlantic Coast Line Railroad Company is indebted to your petitioner in the sum of One hundred and eighty-nine dollars and forty-nine cents, ($189.49). For that on the 19th day of July, 1907, your petitioner delivered to the said Atlantic Coast Line Railroad Company the said articles, to wit: Four bales (4) of waste of the *a*rlue of One hundred and eighty-nine dollars and forty-nine cents, ($189.49); said goods were consigned to International Harvester Company at Auburn, N. Y., and for said goods the said Atlantic Coast Line Railroad Company issued to your petitioner a bill of lading, and that your petitioner is now the owner and holder of said bill of lading, and that said Atlantic Coast Line Railroad Company then and there as the initial carrier, undertook and agreed to transport and deliver said goods to the International Harvester Company at Auburn, N. Y., said goods being then and there an interstate shipment.

a. But although it then and there became the duty of the said defendant company to transport and deliver said goods to the said consignees at Auburn, N. Y., said defendant company has failed to transport and deliver the same to the consignees as aforesaid, although a reasonable time for such delivery has long since passed.

b. That said defendant company has failed and refused either to deliver the said goods to the said consignees or to pay your petitioner the *a*rlue thereof, as they are bound to do under the Acts of Congress regulating commerce, to the injury and damage of your petitioner in the sum of One Hundred and eighty-nine dollars and forty-nine cents, ($189.49)

12th. That the said Atlantic Coast Line Railroad Company is indebted to your petitioner in the sum of forty-three dollars and ninety-four cents, ($43.94). For that on the 22nd day of July, 1907, your petitioner delivered to the said Atlantic Coast Line Railroad Company, the said articles; to wit: 5 bales No. 1, S. White waste, —615 pounds of the value of forty-three dollars and ninety-four cents, ($43.94), said goods were consigned*d* to International Harvester Company, Newart Valley, N. Y., and for said goods the said Atlantic Coast Line Railroad Company issued to your petitioner a bill of lading, and that your petitioner is now the owner and holder of said bill of lading, and that said Atlantic Coast Line Railroad Company then and there as the initial carrier undertook

and agreed to transport and deliver said goods to said International Harvester Co., at Newart Valley, N. Y., said goods being then and there an interstate shipment.

a. But although it then and there became the duty of the said defendant company to transport and deliver said goods to the consignees as aforesaid at Newart Valley, N. Y., said defendant
11 company has failed to transport and deliver the same to the consignees as aforesaid, although a reasonable time for such delivery has long since elapsed.

b. That said defendant company has failed and refused either to deliver said goods to the consignees or to pay your petitioner the value thereof, as they are bound to do under the Acts of Congress regulating commerce and to the injury and damage of your petitioner in the sum of forty three dollars and ninety four cents, ($43.94).

13th. That under the Act of Congress to regulate commerce the defendant company is liable to pay to your petitioner, not only the value of the goods which they have failed to deliver as it was bound to do, but also for a reasonable attorney's fee to be fixed by the Court; and that a reasonable attorney's fees to be allowed your petitioner for counsel fees expended in and about the bringing of this suit is the sum of Five hundred dollars, $500.

Wherefore the premises considered, your petitioner prays judgment against the said Atlantic Coast Line Railroad Company for the sum of Five Hundred and twelve dollars and thirty four cents, ($512.34), for its damages sustained by reason of the failure to deliver said freight or to pay the value thereof, and for the sum of Five hundred dollars attorney's fee; and that process may issue requiring said Atlantic Coast Line railroad Company to be and ap-ear at the next term of the Circuit Court for the Northeastern Division of the Southern District of Georgia, to answer your petitioner's complaint.

(Signed) R. J. SOUTHALL,
Petitioner's Attorney.

12

Process.

In the Circuit Court of the United States for the Northeastern Division of the Southern District of Georgia.

UNITED STATES OF AMERICA,
Northeastern Division, Southern
District of Georgia:

RIVERSIDE MILLS, a Corporation,
versus
ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation.

Complaint.

The President of the United States to the Marshal of the Southern District of Georgia, Greeting:

The defendant Atlantic Coast Line Railroad Company is hereby required, personally or by attorney, to be and appear at the next

term of said Court to be held in the City of Augusta on the third Monday of November next, then and there to answer the plaintiff in an action of complaint as in default thereof, the Court will proceed as to justice shall appertain.

Witness the Honorable Melville W. Fuller Chief Justice of the Supreme Court of the United States at Augusta, in said division and district, this 8th day of November, in the year of our Lord one thousand nine hundred and seven.

(Signed) R. J. SOUTHALL,
Plaintiff's Attorney.

W. H. GODWIN,
Deputy Clerk. [SEAL.]

13 *Marshal's Return of Service.*

UNITED STATES OF AMERICA,
Southern District of Georgia:

I certify that at Augusta, Richmond County, Georgia, within my district, I personally served the within petition and process, on November 8th, 1907, upon the within named Atlantic Coast Line Railroad Company, by handing copies hereof to H. K. Walker, agent of said company, and exhibiting to him the within originals.

The return of

GEORGE F. WHITE,
United States Marshal,
By J. P. MURRAY, *Deputy.*

Dated at Augusta, Georgia, November 9th, 1907.
Filed November 9th, 1907.

W. H. GODWIN, *Deputy Clerk.*

Verdict.

We the jury find for the plaintiff and against the defendant the sum of three hundred and eight and three one hundredth dollars, this January 18th, 1909.

(Signed) JAMES P. RICHARDS, *Foreman.*

Endorsement: In the Circuit Court of the United States for the Northeastern Division of the Southern District of Georgia. November Term, 1907. Riverside Mills, a corporation, versus Atlantic Coast Line Railroad Company, a corporation. Petition and Process. Filed the 8th day of November, 1907. W. H. Godwin, Deputy Clerk. R. J. Southall, Plaintiff's Attorney.

14 *Defendant's Demurrer.*

In the Circuit Court of the United States for the Northeastern Division of the Southern District of Georgia.

RIVERSIDE MILLS
versus
ATLANTIC COAST LINE RAILROAD COMPANY.

Now comes the defendant, the Atlantic Coast Line Railroad Company, and doth demur to the petition in the above stated case, and for cause of demurrer, says:—

1. That the provisions of the Statute, to wit: The last two paragraphs of Section 20 of the Act to Regulate Commerce, as amended June 29th, 1906, providing for the issuance of through bills of lading, and making the initial carrier liable for the loss or damage occasioned by the connecting carrier, is unconstitutional, null and void, being in violation of the 5th Amendment to the Constitution of the United States, which provides that: "No person shall be deprived of life, liberty or property without due process of law."

2. That the provisions of the Statute, to wit: The last two paragraphs of Section 20 of the Act to Regulate Commerce, as amended June 29t- 1906, providing for the issuance of through bills of lading, and making the initial carrier liable for loss and damage occasioned by the connecting carrier, is unconstitutional, null and void, being in violation of the 5th Amendment to the Constitution of the United States, which provides that: "No person shall be deprived of life, liberty or property without due process of law;" said Act to regulate Commerce compelling the receiving carrier to issue a through bill of lading, and then making the initial carrier responsible for the Acts of neglects of such connecting carrier, regardless of the solvency, or business ability of such connecting carrier.

15 3. That the 13th paragraph sets out no cause of action, for that, if the eight- section of the Act to Regulate Commerce, in providing for counsel or attorneys fees, applies to a case where the goods are lost, or damaged, by a connecting carrier, the said Section 8 is unconstitutional, null and void, being in violation of the provision of the 5th Amendment to the Constitution of the United States that: "No person shall be deprived of life, liberty or property without due process of law," in that said initial carrier is forced to issue a through bill of lading and penalized, and made to pay attorneys fees, for the acts of neglect of the connecting carrier, without any provision of law by which the attorneys fees paid out by the initial carrier for the default or damage of the connecting carrier shall be recovered in the event the said connecting carrier is insolvent. Defendant says that any requirement in said act by which it could be made to pay attorneys fees, in connection with the loss occasioned on a connecting carrier, could deprive this defendant of its property without due process of law, in violation of the 5th Amendment of the Constitution of the United States.

Wherefore and for divers other good causes of demurrer, this

defendant doth demur to the petition in the above stated case, and prays the judgment of the Court whether it shall be compelled to make any further or other answer to said petition.

(Signed) J. R. LAMAR,
Attorney Atlantic Coast Line Railroad Company.

STATE OF GEORGIA,
Richmond County:

Personally appeared H. R. Walker, who, being first duly sworn, deposes and says that he is the agent of the Atlantic Coast Line Rail-Road Company, in the City of Augusta, in the Northeastern Division of the Southern District of Georgia, and that the foregoing demurrer is not interposed for delay.

(Signed) H. R. WALKER.

Sworn to and subscribed before me, this March 21st, 1908.

(Signed) GEO. R. COFFIN,
Notary Public, Richmond County, Georgia.

16 I hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

(Signed) J. R. LAMAR,
Attorney for Atlantic Coast Line Railroad Company.

Endorsement: United States Circuit Court, Northeastern Division, Southern District of Georgia. Riverside Mills, versus Atlantic Coast Line Railroad Company. Demurrer of Atlantic Coast Line Railroad Company. Filed in office this 21st day of March, 1908, Sam. F. Garlington, Deputy Clerk. J. R. Lamar, Attorney for Atlantic Coast Line Railroad Company.

17 *Order Overruling Demurrer.*

In the Circuit Court*b* of the United States for the Northeastern Division of the Southern District of Georgia.

RIVERSIDE MILLS, a Corporation,
versus
ATLANTIC COAST LINE RAILROAD COMPANY.

Complaint for Damages.

After hearing the argument of counsel it is considered, ordered and adjudged by the Court that the demurrer filed by the defendants in the above entitled cause be, and the same is hereby overruled.

In open Court this January 14th, 1909.

(Signed) EMORY SPEER,
United States Judge.

Endorsement: United States Circuit Court, Northeastern Division, Southern District of Georgia. Riverside Mills, versus Atlantic Coast Line Railroad Company. Order overruling demurrer. Filed in office this January 14th, 1909, 10 o'Clock, A. M., W. H. Godwin, Deputy Clerk.

18 *Order Allowing Exceptions.*

In the United States Circuit Court, Northeastern Division of the Southern District of Georgia.

RIVERSIDE MILLS
versus
ATLANTIC COAST LINE RAILROAD COMPANY.

Be it known that on this 14th day of January, 1909, the defendant's demurrer to the plaintiff's petition having been, by the Court, overruled, and the defendant having then and there excepted to the order of the Court overruling said demurrer, said defendant's exceptions are duly allowed and this bill of exceptions settled and allowed.

Done in open Court this January 14, 1909.

(Signed) EMORY SPEER, *Judge.*

Endorsement: United States Circuit Court, Northeastern Division, Southern District of Georgia. Riverside Mills, versus Atlantic Coast Line Railroad Company. Order allowing exceptions. Filed in office this January 14th, 1909, 2 o'Clock, P. M., W. H. Godwin, Deputy Clerk.

19 *Defendant's Answer.*

In the Circuit Court of the United States for the Northeastern Division of the Southern District of Georgia.

RIVERSIDE MILLS
versus
ATLANTIC COAST LINE RAILROAD COMPANY.

Now comes the defendant, the Atlantic Coast Line Railroad Company, by its attorney, J. R. Lamar, and subject to its demurrer already filed, for answer to the petition in the above stated case, says:

1. The defendant admits the allegations in paragraphs 1, 2, 3;

2. Defendant admits the receipt of the goods referred to in paragraphs 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the petition;

3. But defendant denies the legal conclusion therein set forth and denies that it is liable to the plaintiff therefor; and

4. Avers that it promptly delivered the said goods to a connecting carrier at Pinners Point or at Richmond, Virginia, and avers that if the said goods were lost or damaged, it was by the connecting carriers between Pinners Point and destination, or by connecting carriers between Richmond, Virginia, and the point of destination;

5. Defendant denies the allegations in paragraph 13, and also denies that it is liable for the attorneys fees incurred by the Plaintiff in this cause.

6. For plea, defendant says that after receiving the goods referred to in the petition, it promptly and safely transmitted the same over

defendant's line, and with all due dispatch and dilligence,
20 promptly and safely delivered the same to connecting carriers, whereby the defendant fully performed and discharged its contract of carriage, and fully performed its liability at common law, and fully performed all valied statutory liabilities.

7. Defendant avers that it is not liable for the loss or damage of the said goods occasioned by the acts of omission or commission of the common carriers to whom the said defendant delivered the said goods as it had contracted to do.

8. For further plea, defendant says that the clause of Section 20 of the Act to regulate commerce, amended June 29th, 1906, commonly known as the Hepburn Bill, providing for the issuance of through bill of lading making the initial carrier liable for loss or damage occasioned by the connecting carrier, is unconstitutional, null and void, and in violation of the 5th Amendment to the Constitution of the United States, which provides that no person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation.

9. For further plea, defendant says that plaintiff ought not to have and maintain its said suit, because defendant says that it is not guilty of the wrongs and injuries alleged against it in the plaintiff's said petition, and of this, the defendant puts itself upon the country.

10. For further plea, the defendant says that the through bill of lading, covering each of the shipments referred to in the petition and issued by defendant to plaintiff, and received and accepted by the plaintiff contained a stipulation;

a. That no carrier shall be liable for loss or damage not occur-ing on its portion of the route;

11. Defendant avers that said provision is valid, and a binding contract, and that the provision in the said Hepburn Bill
21 declaring such limitation is null and void, because in violation of the 5th Amendment to the Constitution of the United States, providing that no person shall be deprived of life, liberty or property without due process of law; the said provision of the Hepburn Act depriving defendant of a right of contract in violation of said fifth Amendment, and making defendant liable for the act of a third person, thereby taking defendant's property without due process of law.

12. Defendant further avers that the provision of the Hepburn Act requiring defendant to issue a through bill of lading, and then make defendant liable for the act of a connecting carrier, is unconstitutional, and in violation of the 5th Amendment to the Constitution of the United States, which provides that no person shall be deprived of life, liberty or property without due process of law.

(Signed) J. R. LAMAR,
Attorney for Defendant.

Endorsement: United States Circuit Court, Northeastern Division, Southern District of Georgia. Riverside Mills, versus Atlantic Coast Line Railroad Company. Answer of Defendant. Filed in office January 18th, 1909, W. H. Godwin, Deputy Clerk.

22 *Opinion of the Court.*

In the Circuit Court of the United States for the Northeastern Division of the Southern District of Georgia.

RIVERSIDE MILLS
versus
ATLANTIC COAST LINE RAILROAD COMPANY.

Action for Damages.

Demurrer upon Ground of Violation of the 5th Amendment of Constitution, Depriving or Property without Due Process of Law.

R. J. Southall and Alex. Akerman for plaintiff.
Joseph Lamar for defendant.

Opinion of the Court, January 14th, 1909.

SPEER, *Judge* (orally):

So clear are my own convictions about this question, also in view of its immediate importance, that perhaps I should not for the sake of attempting anything like a- *net* opinion, delay a decision in the case by taking it under advisement.

For a very long period of our history, Congress, although authorized by the organic law to regulate commerce between the states, failed to make any very valuable or substantial action relating to that great topic. The marvelous development of our interstate and foreign commerce, the multiplication of great railroads, the combinations of these railroads into vast systems, the enormous power which was thus accumulated by the railroads, and the helplessness of the shipper in his conflict with these systems resulting from such accession of power, pressed upon the minds of the members of the National Legislature. Looking then to the letter of the organic law, they found the authority to enact legislation of this general character. The Interstate Commerce Commission was created. Numerous amendments to the original law were made. These were not, however, regarded as sufficient, and this bill, which because of the name of its distinguished author is called the "Hepburn Bill," was enacted.

23 Under this provision the action is brought. It is an action in behalf of the Riverside Mills, a corporation of this city, against the Atlantic Coast Line Railroad. The complaint is that the plaintiff shipped a quantity of its product to points beyond the destination of this railroad and that the goods were not delivered. No payment has been made for them by the consignees, and redress is sought by recourse to and action based upon the provisions of the "Hepburn Bill," which is as follows:

"That any common carrier, railroad or transportation company, receiving property for transportation from a point in one State to

a point in another state shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or any common carrier, railroad or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule or regulation shall exempt such common carrier, railroad or transportation company from the liability hereby imposed."

This is as I understand it, but the converse proposition of what has long been the law in our own state. If a shipment comes to this State over the lines of connecting railways, and a default or loss is occasioned anywhere by the negligence of one of the railway connections of a line within our State, it may result, if I am not incorrect in my recollection, in an action against the railroad whose terminal is here, and which last received the goods as in good order. Instead of making the last railroad responsible, with equal force and justice, Congress has reversed the process, which the Legislature of Georgia long ago fixed and which has been recognized as the law within this state since that statute was enacted.

Where is the wrong in it? It is said that the initial carrier is obliged to give a bill of lading in violation of due process of law. Why so? When suit is brought against him, he is entitled to his day in Court. He can deny that the bill of lading was given, or that the freight was received. He can make any proper defense which may be made in a court of law, and which any other connecting carrier might make wherever the goods are transported or wherever the loss or injury occurred. If the loss occurred from the act of God or from the Country's enemies, for instance on a section of these intra-communicating lines somewhere between here
24 and *and* the point of destination, or was otherwise capable of defense, this railroad would have the privilege of making such defense here.

By the Act of Congress the shipper is afforded an inexpensive and convenient tribunal, in which to seek enforcement of his rights. When we consider the great extension of railroad connections, and the thousands of miles of distance which they comprehend, in the absence of this provision, how helpless would be a shipper here if he should attempt to ship his products to the Pacific Coast, and they should be injured or lost for instance, on the Oregon Short Line. The railroads have every facility for deriving all the information in regard to the claim. They daily settle and determine thousands of claims between themselves. Where there is a controversy between a single individual and many corporations, with such power and such opportunities, how hopeless is he who is compelled to go to a foreign jurisdiction, when the railroad fare there might more than offset his profits. Congress has acted wisely. It has brought the Courts to the door of the shipper. It has bent a listening ear, and heard his complaints. He is afforded the necessary protection of the law, a speedy and cheap trial.

What is the power to "regulate interstate commerce?" Commerce has been defined many times by the Supreme Court. Per-

haps the definition of Mr. Justice Johnson in 9 Wheaton, page 23 of the Law edition, is as good as any other.

"Commerce," he said, "in its simplest signification, means an exchange of goods; but in the advancement of society, labor transportation, intel-igence, care, and various mediums of exchange, become commodities, and enter into commerce. The subject, the vehicle, the agent, and the various operations become the objects of commercial regulation."

We have seen that Congress can regulate the vehicle of commerce and the essentials of that vehicle. It can regulate the proof of the passage of pos-ession, the bill of lading, and it requires that the bill of lading shall be delivered by the initial road to the shipper. What could be more obvious than this necessity? The initial carrier receives the goods from the shipper and inspects them. Best of all, it has the opportunity to speak as to their character, and
25 the method of ascertaining their value. It charges freight on the entire transaction. It "gets the business," as is said, that might be sent over any other road. The common carriers have been given great privileges by the public, among others the right of eminent domain. All the agencies of government are made for its protection. If undue reductions of rates are attempted by State authorities, the carrier at once resorts to the United States Courts, and obtains relief. That relief is ratified by the Supreme Court of the United States. The carrier is the great agent of society, and in the acceptance of that agency, it has received such enormous benefits that it is compelled to submit to those regulations which society finds it necessary to place around it for the protection of the public generally.

To my mind it is amazing that our Government had so long failed to enact this law. I differ toto coelo with my gifted friend, Judge Lamar, and must overrule the demurrer.

Endorsement: United States Circuit Court, Northeastern Division, Southern District of Georgia. Riverside Mills versus Atlantic Coast Line Railroad Company. Opinion of Court. Filed in office this April 3rd, 1909. W. H. Godwin, Deputy Clerk.

26 *Verdict.*

"We the Jury find for the plaintiff and against the defendant the sum of three hundred and eight dollars and three one hundredth- dollars, this January 18th, 1909.

(Signed) JAMES P. RICHARDS, *Foreman.*

Final Decree, Judgment, etc.

In the Circuit Court of the United States for the Northeastern Division of the Southern District of Georgia.

RIVERSIDE MILLS
versus
ATLANTIC COAST LINE RAILROAD COMPANY.

The Jury in the above stated case having returned a verdict for the plaintiff for three hundred and eight dollars and three cents, ($308.03), it is ordered, considered, and adjudged, that the plaintiff have and recover from the defendant the sum of three hundred and eight dollars and three cents ($308.03), principal, with interest thereon, at the rate of seven per cent (7%) per annum, from the date of this judgment, and all costs of the suit to be taxed by the Clerk, including the sum of One Hundred dollars, as attorney's fees, which sum the Court finds to be a reasonable Attorney's fee, and orders that the same be taxed as part of the costs in said case.

This 2nd day of April, 1909.

(Signed) EMORY SPEER,
United States Judge.

R. J. Southall, Akerman and Akerman, Plaintiff's Attorneys.

Endorsement: United States Circuit Court, Northeastern Division, Southern District of Georgia. Riverside Mills, versus Atlantic Coast Line Railroad Company. Final Decree, Judgment, etc. Filed in office this April 3rd, 1909, 10 o'Clock, A. M., W. H. Godwin, Deputy Clerk.

27 *Opinion of the Court.*

In the Circuit Court of the United States for the Northeastern Division of the Southern District of Georgia.

RIVERSIDE MILLS
versus
ATLANTIC COAST LINE RAILROAD COMPANY.

Action for Damages under Hepburn Act.

Claim for Attorney's Fees under Section 8 of the Act.

R. J. Southall, and Alexander Akerman, for Plaintiff.
Joseph R. Lamar, for defendant.

(*Opinion of the Court, April* 2, 1909.)

SPEER, *Judge:*

The question before the Court is briefly this. Where connecting lines of railways, engaged in interstate commerce, shall fail to trans-

port property, which they have received and for the transportation of which they have been paid, and also fail and refuse for an unreasonable time to pay the shipper the loss thus sustained, is the court authorized by the provisions of the Act of Congress, approved June 29th, 1906, known as the "Hepburn Act", to allow in its judgment reasonable attorney's fees to the shipper and against the offending companies?

The precise question in issue has not been determined by a Court of paramount authority. In the case now under consideration, the constitutionality of the entire Act has been vigorously assailed, but the validity of the Act and the liability of the defendant company have been sustained. A decree, directing a recovery of some $300. for its goods shipped in interstate trade over the defendant's connecting lines, has been entered. The liability of the defendant company for the reasonable fee of the plaintiff's attorneys remains to be determined. The construction necessary for decision involves the following clauses of the Act. Section 20 provides:

28 "That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed:

Provided, that nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law."

Section 8 of the Act is as follows:

"That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done, any act matter or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this Act, together with a reasonable attorney's fee, to be fixed by the Court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case."

In the proper interpretation of these clauses we may utilize the familiar rule, and search for the old law, the mischief, and then for the remedy which Congress has attempted to provide. The liability of the common carrier (and this is not restricted to railroads) for the failure to deliver or pay for goods entrusted to it for transportation for hire was fixed by the common law. That law, however, was not sufficient to redress the wrongs of shippers, sustained on modern lines conveying interstate commerce. The loss of the commodities belonging to "David Copperfield" and "Peggotty", carried by "Mr. Barkis" from Blunderstone to Yarmouth

in his wagon, or "the red bag, the striped bag, brown paper parcel, and the leather hat-box", transported by the elder "Weller" for "Mr. Peter Magnus" in the boot of the former gentleman's coach from the "Blue Inn", Whitechapel to the "Great White Horse Inn" at Ipswich, might perhaps have been readily recoverable. It is quite different, however, we may say, with regard to a shipment of cotton goods from the Riverside Mills, in Augusta, to Seattle
29 or San Francisco, over the many connecting railways spanning the continent. The countless losses of such shipments, and their important values became an incalculable injury to the shippers and a burden upon their business. The failure to speedily adjust such losses became the chief contributing cause of this injury to the shipper. Official reserve and official indifference, amounting at times to that "insolence of office" the chiefest of those "spurns which patient merit of the unworthy takes", often greeted the efforts of business men and others to obtain redress. Every shipper of consequence, every practicing attorney holding claims arising from such delinquencies, every Judge trying such claims, can readily recall the circumlocution, and the consequent insufferable delay in the adjustment of claims of the plainest character. When their loss was sustained, we may presume that the claim would be made to the agent of each railroad to the point of destination. Each claim, it seems, must be apparently scrutinized often by more than one department of each successive railroad extending from the point of delivery to the point of destination. It did not matter how many railroads there might have been, how great the distance, how long the time consumed, how unreasonable the delay, how injurious the loss. Each employee with relating duties must at his leisure contemplate the claim in every light of which it was capable, write the result of his discoveries thereon, and forward it to the agent of the connecting line, or to all of the agents of each of the connecting lines. In the meantime, the shipper was suffering the accumulating injury resulting from the loss of his goods, the interruption of his business, the deprivation of the interest on the sum involved, and possibly the loss of other business from the disappointed and exasperated customer, attending the slow return of the now bulky file. At length, after the obviously just demand had been leisurely scrutinized by all the "Tite Barnacles" of this unprecedented circumlocution, the shipper had usually to content himself with a curt refusal to pay anything. Happily for him, however, Congress has opened the National Courts for his
30 claim, no matter how small the amount, and in order to impart some degree of celerity to the mental or meditative activities of the "Tite Barnacles" aforesaid, the penalty of reasonable attorney's fees, to be fixed by the Court, is also granted by the law.

In the absence of such a penalty, the small shipper, notwithstanding the wise purposes of the National legislation, would have been helpless. Take a case like that before the Court, which has been fought at every step here, and which we are now advised by the bill of exceptions presented will be carried to the Supreme Court of the

United States in order to test the authority of Congress to enact such legislation. The amount involved is only $300, and the Riverside Mills, although a prosperous factory, had ordinarily better suffer the loss rather than pay even the moderate amount of attorney's or counsel fees proper in such a case. If, however, the railways, whose negligence under the agreed state of facts occasioned the loss and refused adjustment, must pay the attorney's fees, not only will the plaintiff safely and inexpensively press his remedies for righteous redress, but the result of litigation will have a most salutary effect on the officials of those corporations, who for hire transport in interstate commerce the products of the people. While this provision of law may, therefore, encourage shippers to institute litigation, it will in a short time have the effect of preventing that negligence which renders such litigation possible.

The principle of the statute has been fully upheld by the Supreme Court of the United States in the Seaboard Air Line Railway versus Seegers, 207 U. S. 73. There the State of South Carolina had attached a penalty of $50, to each failure of a railroad company engaged in intrastate commerce to pay a claim for loss or damage with 40 days after the filing of the same, and where there was a recovery of the full amount claimed. The goods shipped in that case were a bunch of bananas, and the freight charges were only $1.75, whereas the penalty sued for was $50. This difference, says Mr. Justice Brewer, "naturally excites attention." But
31 the learned Justice added "We are of the opinion that this case comes within the limit of constitutionality. The object of the statute was not to penalize the carrier for merely refusing to pay a claim in the time required, whether just or unjust, but the design was to bring about a reasonably prompt settlement of all proper claims, the penalty, in case of a recovery in court, operating as a deterrent of the carrier in refusing to settle just claims, and as compensation of the claimant for the trouble and expense of the suit which the carriers unreasonable delay and refusal made necessary." The learned Justice further points out the fact that "the matter to be adjusted is peculiarly within the knowledge of the carrier. It receives the goods and has them in its custody until the carriage is completed." On the other hand, we may add that the shipper does not know what has become of his goods, and the consignee is equally uninformed. "It may be stated as a general rule," said Justice Brewer, "that an act which puts in one class all engaged in a business of a special and public character, requires of them the performance of a duty which they can do better and more quickly than others, and imposes a not exorbitant penalty for the failure to perform that duty within a reasonable time, cannot be adjudged unconstitutional as a purely arbitrary classification." Holding that "the purpose of the legislation" was primarily "to compel the performance of duties which the carrier assumes when it enters upon the discharge of its public functions," the Supreme Court of the United States sustained the validity of the South Carolina legislation upon this subject.

Now, what a state may do within the regulation of intrastate traffic, Congress may do in the regulation of that which is inter-

state. For the reason, then, that the mischief sought to be avoided was the unreasonable delay and the arbitrary refusal to pay just claims, we must conclude that Congress, when it authorized, in the case of a recovery under this great Act to further regulate the vital business of transportation in interstate commerce, the taxation by the Court of a reasonable attorney's fee as a part of the costs of litigation, was clearly within its authority. For these reasons, the Court will allow a fee of One Hundred dollars for the plaintiff's attorneys.

32 Endorsement: United States Circuit Court, Northeastern Division, Southern District of Georgia. Riverside Mills, versus Atlantic Coast Line Railroad Company. Opinion of the Court. Filed April 3rd, 1909, W. H. Godwin, Deputy Clerk.

Bill of Exceptions, etc.

United States Circuit Court for the Northeastern Division, Southern District of Georgia.

RIVERSIDE MILLS
versus
ATLANTIC COAST LINE RAILROAD COMPANY.

Be it remembered that during the November Term, 1908, the above entitled action came on regularly January 14, 1909, to be heard before the Honorable Emory Speer, District Judge, sitting in, and holding the above entitled Circuit Court: R. J. Southall, Esquire, and Alexander Akerman, Esquire, appearing for the plaintiff: and Joseph R. Lamar, Esquire, appearing as attorney for the defendant.

A demurrer having been regularly filed at the first term, the said demurrer came on for argument: and, after argument, the Court overruled the same: and the defendant having then and there excepted to the order of the Court overruling said demurrer, said defendant's exceptions were duly allowed, and the bill of exceptions settled and allowed in open Court on the 14th day of January, 1909, which said bill of exceptions is a part of the record in said cause, and is in the following words:

In the United States Circuit Court, Northeastern Division of the Southern District of Georgia.

RIVERSIDE MILLS
versus
ATLANTIC COAST LINE RAILROAD COMPANY.

Be it known that on this 14th day of January, 1909, the defendant demurrer to the plaintiff's petition having been, by the Court, overruled and the defendant having then and there excepted to
33 the order of — Court overruling said demurrer, said defendant's exceptions are duly allowed and this bill of exceptions settled and allowed.

Done in open Court, this January 14th, 1909.

EMORY SPEER, *Judge.*

Thereafter, a jury was duly empaneled, and sworn to try said cause, whereupon the following proceedings were had, to wit:

It was stated in open court that the respective parties acting through their respective counsel, had entered into a stipulation containing the following:

Agreed Statement of Facts.

In the case of the Riverside Mills, versus the Atlantic Coast Line Railroad Company, now pending in the United States Court, for the Northeastern Division of the Southern District of Georgia, it is mutually agreed by the parties, acting in this respect by their respective counsel, that:

The Atlantic Coast Line Railroad Company received the goods referred to in the petition at the respective dates therein alleged, and that the goods were of the value named in the petition.

That the goods of the value of $9.60 consigned to the Chesapeake Steamship Company, of Baltimore, (Paragraph 4), and goods of the value of $35.84, (Paragraph 5), consigned to W. H. Taylor and Company, of Allentown, Pennsylvania, were never delivered to the consignee, or to the connecting carrier: The Atlantic Coast Line is liable for the loss of said goods, and hereby tenders the sum of $50.00, being the principal and interest for said items; the said sum of $50.00, is accepted by the defendant as a credit on the claim presented by him in the petition aforesaid, without interfering with its right to costs, or otherwise to press the suit.

That goods to the value of $43.94, consigned to International Harvester Company, Newart Valley, New York, (Paragraph 12 of the petition) were lost or damaged, but the value thereof has been paid by the Atlantic Coast Line, and no claim is now made in this suit for the value thereof.

34 That goods of the value of $114.92, consigned to New York Cotton Batting Company, Lockport, New York, (Paragraph 8), were delivered by the Atlantic Coast Line to the connecting carrier, by whom it was delivered to the consignee, and the plaintiff dismisses and withdraws any claim for said sum of $114.92.

That goods of the value of $10.09, consigned to Massasoit Manufacturing Company, New York, New York, (Paragraph 6), and goods of the value of $42.28, consigned to Walker Brothers, Brooklyn, New York, (Paragraph 7); and goods of the value of $45.88, consigned to Walker Brothers, Brooklyn, New York, (Paragraph 9), were tendered to the Atlantic Coast Line, and through bills of lading demanded therefor by the Riverside Mills; that said through bills of lading were issued on the dates named in the petition; the goods, in usual and due course, shipped over the Atlantic Coast Line, to its terminals at Pinner's Point, Virginia, where the said goods were duly delivered to the Old Dominion Steamship Company, a connecting carrier, but by the neglect and default of the old Dominion Steamship Company, were not delivered to the consignee.

That goods of the value of $20.29, consigned to William B. Burke, Rochester, New York, (Paragraph 10); and goods of the value of

$189.49, consigned to the International Harvester Company, at Auburn, New York, (Paragraph 11), were tendered by the Riverside Mills to the Atlantic Coast Line Railroad Company, and through bills of lading demanded therefor. That such through bills of lading were issued on the dates named in the petition, and the said goods respectively forwarded over the line of the Atlantic Coast Line to its terminal at Richmond, Virginia, and there, in due course, promptly delivered to a railroad company engaged in interstate shipment, and a connecting carrier with the Atlantic Coast Line Railroad Company;

That said goods, while in the possession of said connecting carrier, or while in possession of a subsequent connecting carrier, were lost, and were never delivered to the consignees named — the bills of lading.

35 That the Riverside Mill made constant and frequent shipments over the Atlantic Coast Line, and had a blank form of receipt, like the attached, marked "A," which the Riverside Mill filled out, showing what goods it had loaded into cars and the name of the consignee; said receipt containing a stipulation that the shipment is "per conditions of the company's bill of lading," and that the Atlantic Coast Line Railroad Company, on said receipts prepared by the Riverside Mill, issued, for each of the shipments hereinbefore referred to, bills of lading on forms like that attached, marked exhibit "B."

It is further stipulated and agreed, that in allowing credits hereinbefore referred to, that the value of the remaining merchandise is $308.03, and that said goods of the value of $308.03 were in due course delivered by the Atlantic Coast Line Railroad Company to connecting carriers, but that the said goods so delivered to the connecting carriers were not delivered by them to the consignee, but that said goods, while in possession of connecting carriers, between the Atlantic Coast Line Railroad's terminal points and destination, were lost through the negligence of the said connecting carriers.

All of said connecting carriers were engaged in interstate commerce, and were not under the management and control of the Atlantic Coast Line Railroad Company.

The goods lost by the Old Dominion Steamship Company were routed over the same in the receipt prepared by the Riverside Mill, being marked "Via. Atlantic Coast Line.—Old Dominion."

The goods lost between Richmond, Virginia, and destination, were not routed by the Riverside Mills, being marked "Via. Atlantic Coast Line."

All shipments referred to were sent collect,—no freight on any of the shipments being prepaid by the Riverside Mills.

It is admitted that the Riverside Mills is the owner and legal holder of the bills of lading referred to in the petition—covering the goods above referred to, and that the said bills of lading were in form like that attached.

(Here follow Bills of Lading, Exhibits A and B, and reverse side of Exhibit B, marked pp. 36, 37 and 38.)

Exhibit A

ORIGINAL.

Received from

RIVERSIDE MILLS,

Augusta, Ga., 190

By A. C. L. R. R. *R. R. Co.*,

in apparent good order, the articles named below, to be delivered in like good order, without unnecessary delay.

To

At

Via

Marks

AS PER CONDITIONS OF COMPANY'S BILL OF LADING:

No.	ARTICLES.	WEIGHT. Sub. to Cor'ctn.	Rate of Freight per 100 lbs.
	Bales Batting		
	Cases Batting		
	Bales Cotton Waste		
	Bales Old Bagging		
	Rolls Pieced Bagging		
	Bales Cotton Factory Sweepings (Value limited 2 cts. per pound)		
	Refuse Cotton Spinning Factory (Value limited 2 cts. per pound)		

Car Nos.	Initial	Car Nos.	Initial
"	"	"	"
"	"	"	"
"	"	"	"
"	"	"	"
"	"	"	"
"	"	"	"

Blank Forms Furnished by Hamilton Autographic Register Co., Hamilton, Ohio.

No. 12684

Agent.

Exhibit "B"

Form 156.

Atlantic Coast Line Railroad Company

BILL OF LADING.

NOTE.—The shipper may elect to accept the conditions printed on the face and back hereof, and the reduced rates applying thereunder, or may, as provided below, require the carriage of the property at carrier's liability.

If the shipper elects not to accept the said reduced rates and conditions, he should so notify the agent of the receiving carrier, in writing, at the time his property is offered for shipment, and if he does not give such notice it will be understood that he desires the property carried subject to the Standard Bill of Lading conditions in order to secure the reduced rate thereon. Property carried not subject to the conditions of the Standard Bill of Lading will be at the carrier's liability, limited only as provided by Common Law, and by the laws of the United States, and of the several States, in so far as they apply. Property thus carried will be charged twenty (20) per cent. higher (subject to a minimum increase of one (1) cent per hundred pounds) than if shipped subject to the conditions of the Standard Bill of Lading.

NOT NEGOTIABLE If the word "ORDER" is written immediately before or after the name of the party to whose order the property is consigned, the surrender of the Bill of Lading properly endorsed is required before the delivery of the property at destination, as provided by Section 8 on the back hereof.

Received by ATLANTIC COAST LINE RAILROAD COMPANY,

at _____ Station _____ 190__

from _____ the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said carrier agrees to carry to said destination, if on its own road, or otherwise to deliver to another carrier on the route to said destination.

In consideration of the rate charged under the conditions of this Bill of Lading, it is mutually agreed as to each carrier, severally, but not jointly, of all or any of said property over all or any portion of said route to destination, and as to each party at any time in erested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, on the face or back hereof, all of which are agreed to by the shipper as owner, or agent for the owner, and accepted for himself or his assigns as just and reasonable.

MARKS AND NUMBERS.	ARTICLES.	WEIGHT. (Subject to Correction.)
Consignee _____		
DESTINATION. *Place* _____		
County _____		
State _____		
Consignee's address as information only and not for purposes of delivery _____		
Route _____		

Charges advanced, $ _____

and _____ $ _____ _____ *Agent.*

(The Signature of the Agent here acknowledges only the receipt of the property, and the charges advanced, if any.)

THE BLANK SPACES BELOW MUST NOT BE FILLED UP BY THE SHIPPER.

The rate of freight from _____ *to* _____ *is in cents:*

PER ONE HUNDRED POUNDS.													Per Barrel	Per _____
If Times 1st Class	If 1st Class	If 2nd Class	If 3rd Class	If 4th Class	If 5th Class	If 6th Class	If Class A	If Class B	If Class C	If Class D	If Class E	If Class H	If Class F	If SPECIAL

_____ *Agent.*

(The signature of the Agent here acknowledges only the rate given.)

Received $ _____ *to apply in prepayment of the charges on the property described above.*

_____ *Agent.*

(The signature of the Agent here acknowledges only the amount prepaid.

(OVER)

Reverse side Exhibit "B"

Atlantic Coast Line Railroad Company.

J. W. PERRIN, Gen'l Freight Agent, 1st Div., Wilmington, N. C.

JAMES MENZIES, Gen'l Freight Agent, 2nd Div., Savannah, Ga.

A. H. SHEPPARD, Freight Claim Agent, Wilmington, N. C.

R. A. BRAND, Freight Traffic Manager, Wilmington, N. C.

CONDITIONS.

1. No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto by causes beyond its control; or by floods, fire, jettison, ice, collision, delay or quarantine; or by robbers, riots, strikes or stoppage of labor; or by leakage, breakage, chafing, loss in weight, decay, vermin, changes in weather, heat, frost or wet; or for country damage on cotton; or from any cause, if it be necessary or is usual to carry such property upon deck or upon open cars.

2. No carrier is bound to carry said property by any particular train or vessel, or in time for any particular market, or, otherwise than with as reasonable despatch as its general business will permit. Every carrier shall have the right, in case of necessity, to forward said property by any carrier between the point of shipment and the point to which the rate is given. All additional risks and increased expenses incurred by reason of change of route in cases of necessity, shall be borne by the owner of the goods, and be a lien thereon.

3. No carrier shall be liable for loss or damage not occurring on its portion of the route, nor after said property is ready for delivery to consignee. The amount of any loss or damage for which any carrier becomes liable shall be computed at the value of the property at the place and time of shipment under this bill of lading, unless a lower value has been agreed upon or is determined by the classification upon which the rate is based, in either of which events such lower value shall be the maximum price to govern such computation. Claims for loss or damage must be made in writing to the agent at point of delivery promptly after arrival of the property, and if delayed for more than thirty days after the delivery of the property, or after due time for the delivery thereof, no carrier hereunder shall be liable in any event.

4. All property shall be subject to necessary cooperage, baling and repairs at owner's cost. Each carrier over whose route Cotton is to be carried hereunder shall have the privilege of compressing the same, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is an elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of same kind, without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder. No carrier shall be liable for differences in weights or for shrinkage of any grain or seed carried in bulk.

5. Property not removed by the person or party entitled to receive it within twenty-four hours after its arrival at destination, may be kept in the vessel, car, depot, or place of delivery of the carrier, at the sole risk of the owner of said property, or may be, at the option of the carrier, removed and otherwise stored at the owner's risk and cost, and there held subject to lien for all freight and other charges. The delivering carrier may make a reasonable charge per day for the detention of any vessel or car and for use of track after the car has been held forty-eight hours for unloading, and may add such charge to all other charges hereunder, and hold said property subject to a lien therefor. Property destined to or taken from a station or wharf at which there is no regularly appointed agent, shall be entirely at the risk of owner when unloaded from, or until loaded into, car or vessel; and when received from or delivered on private or other sidings or wharves, shall be at owner's risk until the cars are attached to, and after they are detached from trains, or until loaded into, and after unloaded from, vessel.

6. No carrier hereunder will carry or be liable in any way for any document, specie, or for any article of extraordinary value not specifically rated in the published classifications, unless a special agreement to do so and a stipulated value of the articles are endorsed hereon.

7. Every party, whether principal or agent, shipping inflammable, explosive, or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense, or destroyed without compensation.

8. If the word "Order" is written hereon immediately before or after the name of the party to whose order the property is consigned, without any condition or limitation other than the name of a party to be notified of the arrival of the property, the surrender of this bill of lading properly endorsed shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading.

9. Owner or consignee shall pay freight and average, if any, and all other charges accruing on said property before delivery, and according to weight as ascertained by any carrier hereunder; and if upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped, and at the tariff rates, and under the rules provided for by published classification.

10. This bill of lading is signed for the different carriers who may engage in the transportation, severally but not jointly, each of which is to be bound by and have the benefits of the provisions thereof, and in accepting this bill of lading the shipper, owner and consignee of the goods, and the holder of the bill of lading, agree to be bound by all of its stipulations, exceptions and conditions, whether printed or written.

11. If all or any part of said property is carried by water such water carriage shall be performed subject to statutory acts and to all the conditions, whether printed or written, contained in this bill of lading, including the condition that no carrier by water shall be liable for any loss or damage resulting from explosion, accidents to boilers or machinery, or from any latent defects in hull, machinery or appurtenances, existing before, at the time, or after shipment or sailing on the voyage, or unseaworthiness, provided the owners have exercised due diligence to make the vessel seaworthy; nor shall negligence be presumed against any carrier.

The carrier shall have liberty to transfer, to transship, to lighter, to call at any port or ports, to tow or be towed, to deviate, to assist vessels in distress, to navigate without pilots, and to load and discharge goods at any time.

If goods are landed by agreement between any of the parties hereto and carrier at any other than the regular wharf, stations or landing of the carrier, each separate package or article shall be at the risk of the owner immediately upon such discharge.

It is agreed that if any goods are sold short of ultimate destination, each carrier that has completed his part of the transportation shall have earned his agreed upon proportion of the through freight, and the same, with the charges advanced, shall be due and payable out of the proceeds thereof; and for any distance carried, each carrier shall, on the same basis, have earned and be entitled to freight, with charges advanced, for such part of the transportation as has been accomplished.

12. In case of quarantine the goods may be discharged at risk and expense of owners into quarantine depot, or elsewhere, as required by quarantine regulations or authorites, or for the carrier's despatch, or at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when goods are so discharged, or goods may be returned by carriers at owner's risk and expense to shipping point, earning freight both ways. Quarantine expenses, of whatever nature or kind, upon or in respect to goods, shall be borne by the owners of the goods, or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required by quarantine regulations or authorities even though same may have been done by carrier's officers, crew, agents or employees, nor for detention, loss or damage of any kind occasioned by quarantine or the enforcement thereof.

13. Any alteration, addition, or erasure in this bill of lading, which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading, shall be void.

NOT NEGOTIABLE

39 The foregoing statement of facts being made subject to the right of the defendant to insist that under said facts the Atlantic Coast Line Railroad Company is not liable to the plaintiff for said facts, and that the provisions of the Hepburn Act, requiring the initial carrier to issue a through bill of lading, and making the initial carrier liable for the acts, negligence or default of the connecting carrier, and presenting a contract exempting the initial carrier from liability beyond its line, are void, and in violation of the Fifth Amendment to the Constitution of the United States, providing that no person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use, without just compensation.

January 15, 1909.

J. R. LAMAR,
Attorney for the Atlantic Coast Line Railroad.
R. J. SOUTHALL,
ALEXANDER AKERMAN,
Attorneys for Riverside Mill.

Said agreed statement of facts was introduced in evidence and read to the Jury.

This concluded the testimony. No other testimony beyond the agreed statement of facts was offered by either party.

Whereupon, and at the close of the testimony, both parties rested, and the cause was argued to the jury by counsel for the respective parties.

After argument, and before the Court charged the jury, counsel for the defendant moved the Court to instruct the Jury to find a verdict for the defendant, upon the following grounds:

1. Because on the evidence, and in view of the provisions of the Fifth Amendment to the Constitution of the United States that "No person shall be deprived of property without due process of law," the defendant is entitled to a verdict in its favor.

2. Because it affirmatively appears that the defendant has accounted for all goods, except those named in the agreed statement of facts, of the value of $308.03, and that such goods of the value of $308.03 received by the Atlantic Coast Line, were duly
40 delivered to the connecting carriers, and that said goods of the value of $308.03 were lost or damaged by the connecting carrier, and that to make the Atlantic Coast Line Railroad Company liable for the acts of omission, or commission, of such connecting carrier, or for failure to deliver the same to the consignee, is to deprive the said Atlantic Coast Line Railroad Company of its property without due process of law, and in violation of the provision of the Fifth Amendment to the Constitution of the United States, which declares that: "No person shall be deprived of life, liberty or property without due process of law."

Which said motion to direct a verdict for the defendant was overruled by the court and to which ruling the defendant then and there in the presence of the jury, duly excepted, and hereby tenders

to the Court, this its bill of exceptions, to sign, and seal, and the Court does hereby sign and seal the same.

Thereupon the cause proceeded and the plaintiff, on the agreed statement of facts, moved the court to direct a verdict for the plaintiff for $308.03 to which the defendant objected on the grounds following:

1. Because in view of the provisions of the Fifth Amendment to the Constitution of the United States, the plaintiff under the agreed statement of facts, is not entitled to recover a verdict for $308.03 or for any sum;

a. Because it affirmatively appears that all the goods not accounted for aggregate $308.03, and that such goods were not lost, or damaged, by the Atlantic Coast Line Railroad Company, but by connecting carriers, after the said goods had been delivered to said connecting carriers by the Atlantic Coast Line Railroad Company, and that to make the Atlantic Coast Line Railroad Company liable for the acts of omission or commission, of such connecting carrier, or for failure to deliver the same to the consignees, if to deprive the said Atlantic Coast Line Railroad of its property, without due process of law, and in violation of the provisions of the Fifth Amendment to the Constitution of the United States which declares that: "No person shall be deprived of life, liberty or property without due process of law."

b. That the provisions of the Statute popularly known
41 as the Hepburn Bill, to wit: The last two paragraphs of Section 20 of the Act to regulate commerce, as amended June 29th, 1906, requiring the carrier receiving the property for transportation from a point in one state to a point in another state, to issue a receipt or bill of lading, therefor, and making such carrier liable to the lawful holder thereof for any loss, damage or injury to such property caused by it, or by any common carrier, railroad or transportation company, to which said property may be delivered or over whose line or lines, such property may pass, and further providing that no contract, receipt, rule or regulation shall exempt such common carrier, railroad or transportation company from the liability imposed by this act, is unconstitutional, null and void, and in violation of the provisions of the Fifth Amendment to the Constitution of the United States which declares, that: "No person shall be deprived of life, liberty or property without due process of law."

c. That the provisions of said statute, requiring the initial carrier to issue a through bill of lading, is void as interfering with the defendant's right and liberty of contract, guaranteed by the said Fifth Amendment to the Constitution of the United States;

d. That the provision in said statute that no contract, receipt rule or regulation shall exempt such initial carrier, railroad, or transportation company, from the liability imposed by said act, is to deprive the said defendant of the right and liberty to contract, guaranteed to it, and preserved by the said Fifth Amendment, which provides that: "No person shall be deprived of life, liberty or property, without due process of Law.

e. That the provision in said statute authorizing the initial carrier to recover from the connecting carrier for the amount which the initial carrier paid on account of the default of the connecting carrier, is not the equivalent of just compensation, and in violation of the provision of said Fifth Amendment, that private property shall not be taken for public use without just compensation; and is to force the initial carrier to pay the debt of a third person for the interest, or convenience, of the shipper, consignees, and the public, without just compensation, or without adequate provision for compensation—the Statute making no provision for deposit, bond or security, but forcing the initial carrier to issue the through bill of lading, without reference to the solvency, business,
42 capacity, or ability of one or more connecting carrier forming the line between the initial and the terminal point.

Over the objection of the defendant, the Court sustained the motion of the plaintiff and directed the jury to find a verdict for the plaintiff for $308.03. To, which ruling and direction to find a verdict for the plaintiff, counsel for the defendant then and there, in the presence of the jury, and before the retirement of the jury, duly excepted, and hereby tenders to the court, this its bill of exceptions to sign and seal and the court does hereby sign and seal the same.

Whereupon the jury returned a verdict for the plaintiff for $308.03.

After the jury had returned a verdict for the plaintiff for $308.03, the plaintiff contended that under section 8 of the said Hepburn Act, it was entitled to a reasonable attorney's fee, and thereupon moved that the Court would fix the amount of such attorney's fee to be taxed and collected as a part of the costs in the case. To which motion the defendant objected on the grounds that,

a. The Hepburn Bill did not authorize an allowance for attorneys' fees in suits for recovery of loss or damage to goods shipped, or whether the same had been lost or damaged by the initial or the connecting carrier.

b. And that to include attorney's fees in the judgment against defendant is unequal and unjust, and would take defendant's property without due process of law, in violation of the provisions of the Fifth Amendment to the Constitution of the United States, and the said section 8 of said Hepburn Bill, authorizing that attorney's fees be included against defendant being null and void and in violation of said provision of said 5th Amendment.

After argument, the court granted the motion of the said plaintiff and overruled the objections of the said defendant and allowed the plaintiff $100.00 as attorney's fee, to which the judgment
43 overruling the *the* defendant's objection and allowing the plaintiff $100.00 as attorney's fee, the defendant then and there duly excepted, and hereby tenders to the court, this its bill of exceptions, to sign and seal, and the court does hereby sign and seal the same.

Plaintiff thereupon entered up judgment.

And now during the same term of the court at which the rulings

we were made, verdict rendered and judgment entered, and on this the 2nd day of April, 1909, in furtherance of justice, and that right may be done, the defendant, the Atlantic Coast Line Railroad Company, presents the foregoing as its bill of exceptions in this case, and prays that the same may be settled and allowed and signed and certified by the Judge, as provided by law.

November Term 1908, April 2nd, 1909.

JOSEPH R. LAMAR,
Attorney for the Atlantic Coast Line Railroad Company.

The foregoing bill of exceptions is correct in all respects and is hereby approved, allowed and settled, and made a part of the record herein.

Done in open court at the November Term, 1908, this April 2nd, 1909.

(Signed) EMORY SPEER, *Judge.*

Endorsement: United States Circuit Court, Northeastern Division, Southern District of Georgia. Riverside Mills versus Atlantic Coast Line Railroad Company. Bill of Exceptions, Order allowing exceptions. Filed in office this April 3rd, 1909, 10 o'Clock, A. M., W. H. Godwin, Deputy Clerk.

44 *Petition for Writ of Error.*

Supreme Court of the United States.

RIVERSIDE MILLS
versus
ATLANTIC COAST LINE RAILROAD COMPANY.

The above named defendant and plaintiff in error, the Atlantic Coast Line Railroad Company, feeling itself aggrieved by the verdict of the jury, the judgment entered thereon, and the rulings of the Court, during the trial of said cause, to which exceptions were duly filed, comes now, by Joseph R. Lamar, its attorney, and showing that the said case involves the construction, or application of the Constitution of the United States;

And that said case is one in which the constitutionality of a law of the United States is drawn in question, and petitions the said Court, upon order allowing said defendant to prosecute a Writ of Error, to the Honorable, the Supreme Court of the United States, under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and upon the giving of said security, all further proceedings in this Court be suspended, and staid, until the determination of said writ of error by the Supreme Court of the United States.

The said Atlantic Coast Line Railroad Company presents here its assignments of errors.

JOSEPH R. LAMAR,
Attorney for Atlantic Coast Line Railroad Company.

Endorsement: United States Circuit Court, Northeastern Division, Southern District of Georgia. Riverside Mills versus Atlantic Coast Line Railroad Company. Petition for Writ of Error. Filed in office April 3rd, 1909, 10 o'Clock, A. M., W. H. Godwin, Deputy Clerk.

45 *Assignment of Errors.*

RIVERSIDE MILLS
versus
ATLANTIC COAST LINE RAILROAD COMPANY.

Now comes the above named plaintiff in error, the Atlantic Coast Line Railroad Company, by Joseph R. Lamar, its attorney, and says, that, in the record and proceedings in the above entitled cause, there is manifest error in this, to wit:

1. Because, on the evidence, and in view of the provisions of the Fifth Amendment to the Constitution of the United States that "No person shall be deprived of property without due process of law", it was error not to direct a verdict for the defendant.

2. Because it affirmatively appears that the defendant has accounted for all goods, except those named in the agreed Statement of Facts, of the value of $308.03, and that such goods of the value of $308.03, received by the Atlantic Coast Line, were duly delivered by it to connecting carriers, and that said goods of the value of $308.03 were lost or damaged by the connecting carrier, and that to make the Atlantic Coast Line Railroad Company liable for the acts of omission, or commission, of such connecting carrier, or for failure to deliver the same to the consignee, is to deprive the said Atlantic Coast Line Railroad Company of its property without due process of law, and in violation of the provision of the Fifth Amendment to the Constitution of the United States, which declares that: "No person shall be deprived of life, liberty or property without due process of law", and it was error not to direct a verdict for the defendant.

3. Because in view of the provisions of the Fifth Amendment to the Constitution of the United States, the plaintiff, under the evidence, was not entitled to recover, (and it was error to direct a verdict for the plaintiff for $308.03 or for any sum),

46 *a.* Because it affirmatively appears that all the goods not accounted for aggregate $308.03, and that such goods were not lost, or damaged by the Atlantic Coast Line Railroad Company, but by connecting carriers, after said goods had been delivered to said connecting carriers by the Atlantic Coast Line Railroad Company, and that to make the Atlantic Coast Line Railroad Company liable for the acts of omission, or commission, of such connecting carrier, or for failure to deliver the same to the consignees, is to deprive the said Atlantic Coast Line Railroad of its property, without due process of law, and in violation of the provisions of the Fifth Amendment to the Constitution of the United States, which declares that: "No person shall be deprived of life, liberty or property without due process of law."

b. That the provisions of the statute popularly known as the Hepburn Bill, to wit: The last 2 paragraphs of section 20 of the Act to Regulate Commerce, as amended June 29th, 1906, requiring the carrier receiving the property for transportation from a point in one state to a point in another state, to issue a receipt or bill of lading, therefor, and making such carrier liable to the lawful holder thereof for any loss, damage or injury to such property caused by it, or by any common carrier, railroad or transportation company, to which said property may be delivered or over whose line or lines, such property may pass, and further providing that no contract, receipt rule or regulation shall exempt such common carrier, railroad or transportation company from the liability imposed by said Act, is unconstitutional, null and void, and in violation of the provisions of the Fifth Amendment to the Constitution of the United States which declares, that: "No person shall be deprived of life, liberty or property, without due process of law."

c. That the provisions of said statute, requiring the initial carrier to issue a through bill of lading, is void as interfering with the defendants right and liberty of contract, guaranteed by the said Fifth Amendment to the Constitution of the United States:

47 *d.* That the provision in said statute that no contract, receipt, rule or regulation shall exempt such initial carrier, railroad or transportation company from the liability imposed by said act, is to deprive the said defendant of the right and liberty to contract, guaranteed to it, and preserved by the said Fifth Amendment, which provides that: "No person shall be deprived of life, liberty, or property, without due process of law."

e. That the provision in said statute authorizing the initial carrier to recover from the connecting carrier for the amount which the initial carrier paid on account of the default of the connecting carrier is not the equivalent of just compensation, and in violation of the provisions of said Fifth Amendment, that private property shall not be taken for public use without just compensation; and is to force the initial carrier to pay the debt of a third person for the interest, or convenience, of the shipper, consignees, and the public, without just compensation, or without adequate provision for compensation,—the statute making no provision for deposit, bond or security, but forcing the initial carrier to issue the through bill of lading, without references to the solvency, business capacity, or ability, of one or more of the connecting carriers, forming the line between the initial and terminal point.

4. Because in view of the provisions of the Fifth Amendment to the Constitution of the United States, providing that: "No person shall be deprived of life, liberty or property, without due process of law", it was error to overrule defendant's demurrer.

That it was error to allow the plaintiff attorney's fees and to tax the same as costs in said cases against the defendant:

a. Because it include- attorney's fees in the judgment against defendant is unequal and unjust, and would be to take defendant's property without due process of law, and in violation of the provisions of the Fifth Amendment to the Constitution of the United States, and the section 8 of said Hepburn Bill authorizing attorney's fees

to be included in the judgment against defendant is null and void, and in violation of said provisions of said Fifth Amendment.

48 Wherefore, the Atlantic Coast Line Railroad Company, defendant in the original cause, and plaintiff in error, herein prays that the judgment of the said Circuit Court be reversed, and said Circuit Court be directed to grant a new trial in said cause.

JOSEPH R. LAMAR,
Attorney for Plaintiff in Error, Atlantic Coast Line Railroad Company, Defendant in the Lower Court.

Endorsement: United States Circuit Court, Northeastern Division, Southern District of Georgia. Riverside Mills, versus Atlantic Coast Line Railroad Company. Assignments of Error, etc. Filed in office this April 3rd, 1909, 10 o'Clock, A. M., W. H. Godwin, Deputy Clerk.

Order Allowing Writ of Error.

At a stated term, to wit, the November Term, 1908, of the Circuit Court of the United States of America for the Fifth Judicial Circuit, for the Northeastern Division of the Southern District of Georgia.

Present: Honorable Emory Speer, United States District Judge, presiding in said Circuit Court:

RIVERSIDE MILLS
versus
ATLANTIC COAST LINE RAILROAD COMPANY.

Upon motion of J. R. Lamar, Esquire, Attorney for the Atlantic Coast Line Railroad Company, defendant in the above cause, and upon filing a petition for a writ of error, and assignment of error,

It is ordered that a Writ of Error be, and hereby is, allowed to have reviewed in the Supreme Court of the United States, the rulings and judgments heretofore entered herein, and that the amount of bond on said Writ of Error, be and hereby is, fixed at $500, and upon giving such security, all further proceedings in this

49 Court be suspended and stayed until the determination of said appeal by said Supreme Court of the United States. Said bond to act as a supersedeas bond, also as a bond for costs and damages on appeal.

This 2nd day of April, 1909.

(Signed) EMORY SPEER, *Judge.*

Endorsement: United States Circuit Court, Northeastern Division, Southern District of Georgia. Riverside Mills, versus Atlantic Coast Line Railroad Company. Order allowing Writ of Error and fixing bond. Filed in office this April 3rd, 1909, 6 o'Clock, P. M., W. H. Godwin, Deputy Clerk.

Citation.

UNITED STATES OF AMERICA:

The President of the United States to Riverside Mills and R. J. Sothall, and Alexander Akerman, its attorneys, Greeting:

You are hereby cited and admonished to appear at the Supreme Court of the United States at Washington, within thirty days from the date of this Writ, pursuant to a Writ of Error filed in the Clerk's office of the Circuit Court of the United States for the Northeastern Division, Southern District of Georgia, wherein the Atlantic Coast Line Railroad Company is plaintiff in Error; and you, the Riverside Mills, is defendant in Error, to show cause, if any there be, why the judgment in the said Writ of Error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 2nd day of April, 1909, and of the Independence of the United States, the one hundred and thirty third.

(Signed) EMORY SPEER,
United States District Judge, Presiding in the Circuit Court Aforesaid.

Attest
T. F. JOHNSON, *Clerk.*
By W. H. GODWIN, *Deputy Clerk.*

Service of the above citation, and a receipt of a copy, admitted this 2nd day of April, 1909, and all other and further service waived.
R. J. SOUTHALL AND
AKERMAN AND AKERMAN,
Attorneys for Riverside Mills.

50 Endorsement: United States Circuit Court, Northeastern Division, Southern District of Georgia. Riverside Mills versus Atlantic Coast Line Railroad Company. Citation. Filed in office this April 3rd, 1909, 10 o'Clock, A. M., W. H. Godwin, Deputy Clerk.

Appeal Bond.

Know all men by these presents, that we, The Atlantic Coast Line Railroad Company, as principal, and L. D. McCullom, as surety, are held and firmly bound unto Riverside Mills, in the full and just sum of Five Hundred dollars, to be paid to the said Riverside Mills, certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated this 9th day of February, in the year of our Lord one thousand nine hundred and nine.

Whereas lately at a United States Circuit Court for the Northeastern Division of the Southern District of Georgia, in a suit de-

pending in said Court, between Riverside Mills, plaintiff, and the Atlantic Coast Line Railroad Company, defendant, a verdict and judgment was rendered against the said Atlantic Coast Line Railroad Company, and the said Atlantic Coast Line Railroad Company, having obtained a Writ of Error, and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Riverside Mills, citing and admonishing the Riverside Mills, and its attorneys, to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Atlantic Coast Line Railroad Company shall prosecute said Writ of Error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation is void; else to remain in full force and virtue.

ATLANTIC COAST LINE RAILROAD COMPANY.

By J. R. LAMAR, *Attorney.* [SEAL.]

L. D. McCULLOM. [SEAL.]

Approved by:

EMORY SPEER, *Judge.*

Endorsement: United States Circuit Court, Northeastern Division, Southern District of Georgia. Riverside Mills versus Atlantic Coast Line Railroad Company. Appeal Bond. Filed in office this April 3rd, 1909, 10 o'Clock A. M., W. H. Godwin, Deputy Clerk.

51 In the Circuit Court of the United States for the Northeastern Division of the Southern District of Georgia.

I, W. H. Godwin, Deputy Clerk of the Circuit Court of the United States for the Southern District of Georgia, at Augusta in the fifth Circuit and District aforesaid, do hereby certify the foregoing to be a true and correct copy of the record and of all the proceedings in cause No. 68 on the common law docket of said Court, entitled Riverside Mills versus Atlantic Coast Line Railroad Company, as the same now appears on file and of record in the office of the Clerk of said Court, at Augusta, in said District.

To certify which, witness my hand and the seal of said Court at Augusta, in said district, this the 26th day of April, A. D. 1909.

[Seal of U. S. Circuit Court Southern District of Georgia.]

W. H. GODWIN,
Deputy Clerk U. S. Circuit Court, Southern District of Georgia, Northeastern Division, at Augusta.

[Endorsed:] United States Circuit Court, Northeastern Division, Southern District of Georgia. Atlantic Coast Line R. R. Co., plaintiff in error, versus Riverside Mills, defendant in error. Transcript.

Endorsed on cover: File No. 21,650. S. Georgia C. C. U. S. Term No. 441. Atlantic Coast Line Railroad Company, plaintiff in error, versus Riverside Mills. Filed May 4th, 1909. File No. 21,650.

ATLANTIC COAST LINE RAILROAD COMPANY *v.* RIVERSIDE MILLS.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

No. 215. Argued October 19, 20, 1910.—Decided January 3, 1911.

A provision in a bill of lading issued by the initial carrier, that it should not be liable for loss or damage not occurring on its portion of the route, is not a contract of exemption from its own liability as a carrier, but a provision of non-assumption of the liabilities of others and at common law relieves it of such liabilities.

The general rule adopted by this court is that, in the absence of legislation, a carrier, unless there be a special contract, is only bound to carry over its own line and then deliver to a connecting carrier; it may, however, contract to carry beyond its line, and if it does so its common-law carrier liability extends over the entire route.

It was not only the legal elements of the situation, but also the fact that the business prosperity of the country largely depends on through rates and routes of transportation, that induced Congress to enact such regulations in regard to the duties and liabilities of interstate carriers as would relieve shippers whose goods were damaged from the burden of proving where the loss occurred.

There is no absolute freedom of contract. The Government may deny liberty of contract by regulating or forbidding every contract reasonably calculated to injuriously affect public interests.

The United States is a Government of limited and delegated powers but in respect to the powers delegated, including that to regulate commerce between the States, the power is absolute except as limited by other provisions of the Constitution.

Congress has power to prohibit a carrier engaged in interstate commerce from limiting by contract its liability beyond its own line,

and the Carmack amendment of January 29, 1906, c. 3591, 34 Stat. 584, 595, to § 20 of the Interstate Commerce Act, making such carriers liable for loss or damage to merchandise received for interstate transportation beyond their own lines, notwithstanding any contract of exemption in the bill of lading, is a valid exercise of such power and is not in conflict with the due process provision of the Fifth Amendment.

Quære, and not decided, whether a carrier can be compelled to accept goods for transportation beyond its own lines or be required to make a through or joint rate over independent lines.

Under the Carmack amendment to the Interstate Commerce Act, the initial carrier is, as principal, liable not only for its own negligence, but that of any agency which it may use, although as between themselves the carrier actually causing the loss may be primarily liable.

Section 8 of the act to regulate commerce of February 4, 1887, c. 104, 24 Stat. 379, 382, does not authorize the taxing of an attorney's fee in an action to recover damages for loss to goods which does not result from a violation of the act.

168 Fed. Rep. 987 and 990, affirmed.

THIS was an action to recover the value of goods received by the Atlantic Coast Line Railroad at a point on its line in the State of Georgia for transportation to points in other States. The agreed statement of facts showed that the goods were safely delivered by the Atlantic Coast Line Railroad to connecting carriers, and were lost while in the care of such carriers, and the question is whether the initial carrier is liable for such loss.

The stipulated facts showed that the goods were tendered to the Atlantic Coast Line Railroad and through bills of lading demanded therefor, which were duly issued, as averred, on the dates named in the petition. That the goods so received were forwarded over the lines of the receiving road and in due course delivered to a connecting carrier engaged in interstate shipment for continuance of the transportation. It was also stipulated "that the Riverside Mill made constant and frequent shipments over the Atlantic Coast Line, and had a blank form of receipt, like the attached, marked 'A,' which the

Riverside Mill filled out, showing what goods it had loaded into cars and the name of the consignee; said receipt containing a stipulation that the shipment is 'per conditions of the company's bill of lading,' and that the Atlantic Coast Line Railroad Company, on said receipts prepared by the Riverside Mill, issued, for each of the shipments hereinbefore referred to, bills of lading on forms like that attached, marked exhibit 'B.'"

Upon the reverse side of the bill of lading were certain conditions, one of which was that "No carrier shall be liable for loss or damage not occurring on its portion of the route." The tenth clause thereof was in these words:

"This bill of lading is signed for the different carriers who may engage in the transportation, severally but not jointly, each of which is to be bound by and have the benefits of the provisions thereof, and in accepting this bill of lading the shipper, owner and consignee of the goods, and the holder of the bill of lading, agree to be bound by all its stipulations, exceptions and conditions, whether printed or written."

The court below, upon this state of facts, instructed a verdict for the plaintiff, upon which there was judgment for the amount of the verdict, and, upon motion of the plaintiff, an attorney's fee of $100 was ordered to be taxed as part of the costs in the case. Thereupon error was assigned, and this writ of error sued out by the railroad company.

Mr. J. R. Lamar, for plaintiff in error in this case and *Mr. C. H. Moorman,* with whom *Mr. B. D. Warfield* and *Mr. Henry L. Stone* were on the brief, for plaintiff in error in No. 286:[1]

The cases below hold that the statute is a great convenience to the shipper; is declaratory of the common law; that the initial carrier at common law is liable beyond its

[1] See *post,* p. 209.

line, and can be prohibited from limiting an existing liability beyond its line; that amendment becomes a part of the contract, and as the goods are voluntarily accepted for interstate shipment, they are therefore subject to interstate regulations of Congress; that contracts of exemption are rendered ineffectual by this statute, and that Congress has the same power to regulate commerce as it has to regulate the relation of master and servant; that it is an incident of the right to make through and joint rates. *Smeltzer Case*, 158 S. W. Rep. 649; *L. & N. R. R. Co.* v. *Scott*, 118 S. W. Rep. 992; *Pittsburg Ry. Co.* v. *Mitchell*, 91 N. E. Rep. 735; *Galveston* v. *Piper*, 115 S. W. Rep. 108; *St. Louis* v. *Grayson*, 115 S. W. Rep. 933; *Greenwald* v. *Weir*, 115 N. Y. Supp. 311.

Plaintiff in error, however, claims that the act deprives both the initial carrier and the shipper of the right to make a just and reasonable contract which it could do at common law. 1 Hutchinson on Carriers, 3d ed., 153, 233, 405; *Cau* v. *Texas & Pacific Ry. Co.*, 194 U. S. 424; *Michigan Central* v. *Myrick*, 107 U. S. 102. This is contrary to the Fifth Amendment, *Allgeyer* v. *Louisiana*, 165 U. S. 589; *Lochner* v. *New York*, 198 U. S. 45; *Adair* v. *United States*, 208 U. S. 161, 174, as is also the provision that the initial carrier "shall issue a bill of lading" and "shall be liable to the holder of the bill of lading for any damage caused by any connecting carrier. *Attorney General* v. *Old Colony R. R. Co.*, 22 L. R. A. 112; *Norfolk R. R. Co.* v. *Stuart Co.*, 63 S. E. Rep. 415; *McCann* v. *Eddy* (Mo.), 27 S. W. Rep. 541; Cooley's Const. Lim., 7th ed., 150; *Lindsey Co.* v. *Mullen*, 176 U. S. 155, 143; *Rodgers* v. *Camp*, 44 Connecticut, 297; *Colon* v. *Lisk*, 47 N. E. Rep. (N. Y.) 333; *Ohio &c. R. R. Co.* v. *Lacey*, 78 Illinois, 55; *Knoxville R. R. Co.* v. *McMillan*, 65 L. R. A. 296; *Woodward* v. *Vermont Central R. R. Co.*, 62 N. E. Rep. 1051; 180 Massachusetts, 599; 217 U. S. 196, 205; *Dirkin* v. *Kingston Coal Co.*, 171 Pa. St. 199, 203; *S. C.*, 50 Am. St. Rep.

805; *Williams* v. *Thaylor Co.*, 40 L. R. A. 812 (W. Va.); *Missouri R. R. Co.* v. *Nebraska*, 164 U. S. 403; *Same* v. *Same*, 217 U. S. 196.

Giving the initial carrier its day in court does not save the statute, as no provision for hearing will support a statute that takes the property of A to pay the debt of B. *Chicago &c. R. R. Co.* v. *Chicago*, 166 U. S. 234; *Long Island Water Co.* v. *Brooklyn*, 166 U. S. 695; *Taylor* v. *Porter*, 4 Hill (N. Y.), 140.

The act does not even give the connecting carrier its day in court. It is bound by the judgment without notice, and if it had notice, the connecting carrier is not estopped from showing that it was free from negligence. *Robins* v. *Chicago*, 2 Black, 418; *City of Boston* v. *Worthington*, 10 Gray, 496; *Lincoln* v. *First Nat. Bank*, 60 L. R. A. 924.

The act would make a connecting carrier in Canada liable on shipment from New York to Detroit, though manifestly the Canadian company is not subject to the provisions of the Hepburn bill.

Even if the judgment against the initial carrier does bind the connecting carrier, that could not satisfy the requirement of the Constitution, for a subsequent and contingent right to an action at law against corporations or individuals of undefined responsibility is not the compensation which the Constitution requires. *Bloodgood* v. *Mohawk*, 31 Am. Dec. 368; *Haverhill* v. *Commissioners*, 103 Massachusetts, 120; *Stockyard Co.* v. *L. & N. R. R. Co.*, 192 U. S. 568; *Cherokee Nation* v. *Sou. Pac. R. R. Co.*, 135 U. S. 661.

The statute is not a valid exercise of the power to regulate commerce. Citizens have the right to engage in interstate commerce. *Crutcher* v. *Kentucky*, 141 U. S. 57. They are not obliged to yield to an unconstitutional statute as condition precedent to so doing. Nor can Congress treat the right as a privilege not to be availed of except

upon such conditions it may prescribe, if the conditions are otherwise beyond the power of Congress. *Employers' Liability Case*, 207 U. S. 502; *Adair Case*, 208 U. S. 180. The grant to the National Government under the commerce clause is subject to the limitations of the Fifth Amendment. *Monongahela Bridge Co.* v. *United States*, 148 U. S. 345.

The power to regulate commerce includes the power to facilitate and expedite transportation of goods, but does not authorize the prohibition of the reasonable and just contracts under which commerce has been developed, and which do not, and are not intended to, impede commerce. *Railroad Co.* v. *Richmond*, 19 Wall. 589, 590; *Central Ry. Co.* v. *Murphy*, 196 U. S. 204, 205; *Lottery Case*, 188 U. S. 362.

The statute contains provisions which are not valid regulations of interstate commerce. The initial carrier cannot be made liable on the theory that Congress has power to make through and joint rates. For the making of through and joint rates is essentially contractual. *Star Co.* v. *Atchison R. R. Co.*, 14 I. C. C. 354; *Kentucky Bridge Co.* v. *L. & N. R. R. Co.*, 37 Fed. Rep. 630; and the courts have never decided to what extent the carrier can be required to make through and joint rates. *Sou. Pac. R. R. Co.* v. *I. C. C.*, 200 U. S. 553; *Atchison Ry. Co.* v. *Denver &c. Ry. Co.*, 110 U. S. 680; *Cole* v. *Central*, 86 Georgia, 255; *Burlington Ry. Co.* v. *Dey*, 82 Iowa, 312; *S. C.*, 31 Am. St. Rep. 490, 499; *Jacobson* v. *Wisconsin*, 70 Am. St. Rep. 364; 179 U. S. 292; *Central Stockyards* v. *L. & N. R. R. Co.*, 192 U. S. 571; *Chicago &c. Ry. Co.* v. *Osborne*, 52 Fed. Rep. 915; *Int. Com. Com.* v. *Stickney*, 215 U. S. 98, 106; *Penn Ref. Co.* v. *Western &c. R. R. Co.*, 208 U. S. 208, 222.

Limited liability acts of Congress, whether passed in pursuance of the admiralty jurisdiction or the commerce clause, or both, were primarily intended to prevent the making of unreasonable stipulations in bills of lading

(*The Delaware*, 161 U. S. 472), and at most only related to the liability of owners for their own negligence, and did not make them or the vessel liable for injuries occasioned by the negligence of another vessel by which the goods might be forwarded.

The initial carrier is not liable on the ground stated in the *Smeltzer Case*, 158 Fed. Rep. 661, that the act became a part of the contract, for if the act is void, it imposes no duties, and is as though it had never been passed. *Norton* v. *Shelby County*, 118 U. S. 426; *Cleveland* v. *Clemmons*, 59 L. R. A. 775; *People ex rel. Rodgers* v. *Koler*, 166 N. Y. 1; *S. C.*, 52 L. R. A. 814.

Nor has the company voluntarily made itself liable. *Lake Shore Ry. Co.* v. *Smith*, 173 U. S. 697.

The contract under which the goods were received is an entirety. Part of it cannot be laid hold of to acquire interstate jurisdiction, and the balance ignored, whereby interstate relation is stipulated to cease in law, when it ceases in fact by delivery to the next carrier. *McCarn* v. *International Co.*, 19 S. W. Rep. 549; *Hartley* v. *St. Louis Co.*, 89 N. W. Rep. 88; *Railroad Co.* v. *Richmond*, 19 Wall. 589; *Michigan Central R. R. Co.* v. *Myrick*, 107 U. S. 110.

The statute imposes mandatory requirements instead of permissive provisions at common law, and the Missouri statute in part copied by the Carmack amendment was sustained because the provisions were not mandatory. *Missouri Ry. Co.* v. *McCann*, 174 U. S. 580.

The provision as to attorney's fees under § 8, also takes property without due process of law. *Gulf &c. R. R. Co.* v. *Ellis*, 165 U. S. 150, 160.

Mr. John Maynard Harlan and *Mr. Lewis W. McCandless*, by leave of the court, filed a brief attacking the constitutionality of certain portions of § 20 of the act to regulate commerce.

Mr. R. J. Southall, with whom *Mr. Charles Akerman* and *Mr. Alexander Akerman* were on the brief, for defendant in error, submitted:

The mischief sought to be remedied by the statute was the trouble, delay, and expense to the shipper in collecting claims for loss or damage by the carriers. *Cent. of Ga. Ry. Co.* v. *Murphey*, 196 U. S. 194.

The constitution gives Congress full power to regulate interstate commerce. *Gibbons* v. *Ogden*, 9 Wheat. 196; *Howard* v. *Ill. Cent. R. R. Co.*, 207 U. S. 463; *Smeltzer* v. *St. Louis & S. F. R. R. Co.*, 158 Fed. Rep. 649; *Lottery Case*, 188 U. S. 321.

Section 20 of the Hepburn bill (Carmack amendment) was only intended to compel the carriers to return to the common-law rule which made the initial carriers liable, in the absence of contract limiting the carrier to liability for loss occurring on its own line, and to prohibit such contracts as being contrary to the declared public policy of the United States. *A., T. & S. F. R. R. Co.* v. *D. & N. O. R. R. Co.*, 110 U. S. 688; *Southern Pacific Co.* v. *Crenshaw*, 5 Ga. App. 675; *S. C.*, 63 S. E. Rep. 865; *Smeltzer* v. *St. Louis & S. F. R. R. Co.*, 158 Fed. Rep. 649.

The liberty of contract guaranteed by the Constitution is subject to such reasonable restraints as may be imposed by Congress for the public good and general welfare. *Adair* v. *United States*, 208 U. S. 161; *United States* v. *Traffic Association*, 171 U. S. 571; *United States* v. *Trans-Missouri Assn.*, 166 U. S. 290; *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211; *Northern Securities Co.* v. *United States*, 193 U. S. 197; *Swift & Co.* v. *United States*, 196 U. S. 375.

Railroad companies are subject to legislative control for the protection of the public. *N. Y. & N. E. R. R. Co.* v. *Bristol*, 151 U. S. 556; *Nashville, C. & St. L. R. R. Co.* v. *Alabama*, 128 U. S. 96; *Georgia R. & Bkg. Co.* v. *Smith*, 128 U. S. 174; *Minneapolis & St. L. R. R. Co.* v. *Beck-*

with, 129 U. S. 26; *Dent* v. *West Virginia*, 129 U. S. 114; *Charlotte, C. & S. R. R. Co.* v. *Gibbes*, 142 U. S. 386; *Minneapolis & St. L. R. R. Co.* v. *Emmons*, 149 U. S. 364.

Congress may fix a new rule of civil liability in matters of interstate commerce. Act of March 2, 1893, 27 Stat. 531; *Johnson* v. *Sou. Pac. Co.*, 196 U. S. 1.

As to the power of Congress to regulate the liability of carriers and others engaged in interstate commerce for injury to person or property, see *Sherlock* v. *Alling*, 93 U. S. 99; *Missouri R. R. Co.* v. *Mackey*, 127 U. S. 205; *Baltimore & Ohio R. R. Co.* v. *Baugh*, 149 U. S. 368; *Chicago, M. & St. P. R. R. Co.* v. *Solan*, 169 U. S. 133; *Martin* v. *Pittsburg & L. E. R. R. Co.*, 203 U. S. 284.

It is for Congress to determine what public policy requires with respect to common carriers engaged in interstate commerce. *United States* v. *Joint Traffic Assn.*, 171 U. S. 569, 571; *Missouri R. R. Co.* v. *Mackey*, 127 U. S. 205.

The allowance of attorneys' fees was proper. *Seaboard Air Line* v. *Seegers*, 207 U. S. 73; *Montague & Co.* v. *Lowry*, 193 U. S. 38.

Mr. Wm. S. Kenyon, Assistant to the Attorney General, with whom *The Attorney General* was on the brief, by leave of the court for the United States, as *amicus curiæ* in support of the constitutionality of § 20 of the act of June, 1906.

After making the above statement, MR. JUSTICE LURTON delivered the opinion of the court.

The goods of the defendants in error were lost by a connecting carrier to whom they had been safely delivered. Though received for a point beyond its own line and for a point on the line of a succeeding carrier, there was no agreement for their safe carriage beyond the line of the plaintiff in error, but, upon the contrary, an express

agreement that the initial carrier should not be liable for "a loss or damage not occurring on its own portion of the route." Such a provision is not a contract for exemption from a carrier's liability as such, but a provision making plain that it did not assume the obligation of a carrier beyond its own line, and that each succeeding carrier in the route was but the agent of the shipper for a continuance of the transportation. It is therefore obvious that at the common law an initial carrier under such a state of facts would not be liable for a loss through the fault of a connecting carrier to whom it had, in due course, safely delivered the goods for further transportation. *Railroad* v. *Pratt*, 22 Wall. 123; *Myrick* v. *Railroad*, 107 U. S. 102; *Southern Pac. Ry.* v. *Interstate Commerce Commission*, 200 U. S. 536, 554. Liability is confessedly dependent upon the provision of the act of Congress regulating commerce between the States known as the Carmack amendment of January 29, 1906, c. 3591, § 7, 34 Stat. at Large, 584, 595. The twentieth section of the act of February 4, 1887, c. 104, 24 Stat. at Large, 379, as changed by the Carmack amendment, reads as follows:

"That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed. Provided, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

"That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof."

The power of Congress to enact this legislation has been denied, first, because it is said to deprive the carrier and the shipper of their common-law power to make a just and reasonable contract in respect to goods to be carried to points beyond the line of the interstate carrier; and, second, that in casting liability upon the initial carrier for loss or damage upon the line of a connecting carrier the former is deprived of its property without due process of law.

The indisputable effect of the Carmack amendment is to hold the initial carrier engaged in interstate commerce and "receiving property for transportation from a point in one State to a point in another State" as having contracted for through carriage to the point of destination, using the lines of connecting carriers as its agents.

Independently of the Carmack amendment the carrier, when tendered property for such transportation, might elect to contract to carry to destination, in which case it necessarily agreed to do so through the agency of other and independent carriers in the line; or, it might elect to carry safely over its own lines only and then deliver to the next carrier, who would then become the agent of the shipper. In the first case the receiving carrier's liability, as carrier, extends over the whole route, for, on obvious grounds, the principal is liable for the acts of its agent. In the other case its carrier liability ends at its own terminal, and its further liability is merely that of a forwarder. Having this power to make the one or the

other contract, the only question which has occasioned a conflict in the decided cases was whether it, in the particular case, made the one or the other.

The general doctrine accepted by this court, in the absence of legislation, is, that a carrier, unless there be a special contract, is only bound to carry over its own line and then deliver to a connecting carrier. That such an initial carrier might contract to carry over the whole route was never doubted. It is equally indisputable that if it does so contract, its common-law carrier liability will extend over the entire route. *Railway* v. *McCarthy*, 96 U. S. 258, 266; *Railroad* v. *Pratt*, 22 Wall. 123; *Railroad* v. *American Trading Co.*, 195 U. S. 439; *Muschamp* v. *Lancaster Railway Co.*, 8 M. & W. 421.

The English cases beginning with *Muschamp* v. *Lancaster Railway Company*, 8 M. & W. 421, decided in 1841, down to *Bristol &c. Railway* v. *Collins*, 7 H. L. Cases, 194, have consistently held that the mere receipt of property for transportation to a point beyond the line of the receiving carrier, without any qualifying agreement, justified an inference of an agreement for through transportation and an assumption of full carrier liability by the primary carrier. The ruling is grounded upon considerations of public policy and public convenience, and classes the receipt of goods so designated for a point beyond the carrier line as a holding out to the public that the carrier has made its own arrangements for the continuance by a connecting carrier of the transportation after the goods leave its own line. There are American cases which take the same view of the question of evidence thus presented. Some of them are *Railroad* v. *Campbell*, 7 Heisk. (Tenn.) 257; *Railroad* v. *Mt. Vernon Co.*, 84 Alabama, 175; *Railroad* v. *Hasselkus*, 91 Georgia, 384; *Beard* v. *Railroad*, 79 Iowa, 531; *Kyle* v. *Railroad*, 10 Rich. (S. C.) 382; *Railroad* v. *Wilcox*, 84 Illinois, 240; *Railroad* v. *Rogers & Hartsell*, 6 Heisk. (Tenn.) 143.

Upon the other hand, many American courts have repudiated the English rule which holds the carrier to a contract for transportation over the whole route, in the absence of a contract clearly otherwise, and have adopted the rule that unless the carrier specifically agrees to carry over the whole route its responsibility, as a carrier, ends with its own line, and that for the continuance of the shipment its liability is only that of a forwarder. The conflict has, therefore, been one as to the evidence from which a contract for through carriage to a place beyond the line of the receiving carrier might be inferred.

In this conflicting condition of the decisions as to the circumstances from which an agreement for through transportation of property designated to a point beyond the receiving carrier's line might be inferred, Congress by the act here involved has declared, in substance, that the act of receiving property for transportation to a point in another State and beyond the line of the receiving carrier shall impose on such receiving carrier the obligation of through transportation with carrier liability throughout. But this uncertainty of the nature and extent of the liability of a carrier receiving goods destined to a point beyond its own line was not all which might well induce the interposition of the regulating power of Congress. Nothing has perhaps contributed more to the wealth and prosperity of the country than the almost universal practice of transportation companies to coöperate in making through routes and joint rates. Through this method a situation has been brought about by which, though independently managed, connecting carriers become in effect one system. This practice has its origin in the mutual interests of such companies and in the necessities of an expanding commerce.

In the leading case of *Muschamp* v. *Lancaster Railway Company*, cited above, Lord Abinger defended the inference of a contract for through carriage from the mere

receipt of a package destined to a point beyond the line of the receiving carrier upon the known practice in his day of such carriers. Upon this subject, in speaking of connecting lines of railway, he said: "These railway companies, though separate in themselves, are in the habit, for their own advantage, of making contracts, of which this was one, to convey goods along the whole line, to the ultimate terminus, each of them being agents of the other to carry them forward, and each receiving their share of the profits from the last."

The tenth clause of the conditions annexed to this bill of lading, and shown elsewhere, affords a fair illustration of the customary methods of connecting carriers to cooperate for their mutual benefit in carrying on transportation begun by one which must be continued by other lines over which the thing to be transported must go. The receiving carrier makes the rate and the route, and as the agent of every such connecting carrier executes a contract which is to bind each of them, "severally, but not jointly," one of the terms of the agreement being that each carrier shall be liable only for loss or damage occurring on its own line. Through this well known and necessary practice of connecting carriers there has come about, without unity of ownership or physical operation, a singleness of charge and a continuity of transportation greatly to the advantage of the carrier and beneficial to the great and growing commerce of the country.

Along with this singleness of rate and continuity of carriage there grew up the practice by receiving carriers, illustrated in this case, of refusing to make a specific agreement to transport to points beyond its own line, whereby the connecting carrier for the purpose of carriage would become the agent of the primary carrier. The common form of receipt, as the court may judicially know, is one by which the shipper is compelled to make with each carrier in the route over which his package

must go a separate agreement limiting the carrier liability of each separate company to its own part of the through route. As a result the shipper could look only to the initial carrier for recompense for loss, damage or delay occurring on its part of the route. If such primary carrier was able to show a delivery to the rails of the next succeeding carrier, although the packages might and usually did continue the journey in the same car in which they had been originally loaded, the shipper must fail in his suit. He might, it is true, then bring his action against the carrier so shown to have next received the shipment. But here, in turn he might be met by proof of safe delivery to a third separate carrier. In short, as the shipper was not himself in possession of the information as to when and where his property had been lost or damaged and had no access to the records of the connecting carriers who in turn had participated in some part of the transportation, he was compelled in many instances to make such settlement as should be proposed.

This burdensome situation of the shipping public in reference to interstate shipments over routes including separate lines of carriers was the matter which Congress undertook to regulate. Thus when this Carmack amendment was reported by a conference committee, Judge William Richardson, a Congressman from Alabama, speaking for the committee of the matter which it was sought to remedy, among other things, said:

"One of the great complaints of the railroads has been —and, I think, a reasonable, just and fair complaint— that when a man made a shipment, say, from Washington, for instance, to San Francisco, Cal., and his shipment was lost in some way, the citizen had to go thousands of miles, probably, to institute his suit. The result was that he had to settle his damages at what he could get. What have we done? We have made the initial carrier, the carrier that takes and receives the shipment, respon-

sible for the loss of the article in the way of damages. We save the shipper from going to California or some distant place to institute his suit. Why? The reasons for inducing us to do that were that the initial carrier has a through route connection with the secondary carrier, on whose route the loss occurred, and a settlement between them will be an easy matter, while the shipper would be at heavy expense in the institution of a suit. If a judgment is obtained against the initial carrier, no doubt exists but that the secondary carrier would pay it at once. Why? Because the arrangement, the concert, the coöperation, the through route courtesies between them would be broken up if prompt payment were not made. We have done that in conference." (Cong. Rec. Pt. 10, p. 9580.)

It must be conceded that the effect of the act in respect of carriers receiving packages in one State for a point in another and beyond its own lines, is to deny to such an initial carrier the former right to make a contract limiting liability to its own line. This it is said is a denial of the liberty of contract secured by the Fifth Amendment to the Constitution. To support this counsel cite such cases as *Allgeyer* v. *Louisiana*, 165 U. S. 589; *Lochner* v. *New York*, 198 U. S. 45, and *Adair* v. *United States*, 208 U. S. 161.

This power to regulate is the right to prescribe the rules under which such commerce may be conducted. "It is," said Chief Justice Marshall, in *Gibbons* v. *Ogden*, 9 Wheat. 1, 197, "a power vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States." It is a power which extends to the regulation of the appliances and machinery and agencies by which such commerce is conducted. Thus in *Johnson* v. *Southern Pac. Ry.*, 196 U. S. 1, an act prescribing safety ap-

pliances was upheld. And in *Interstate Commerce Commission* v. *Illinois Central R. R. Co.*, 215 U. S. 452, it was held that the equipment of an interstate railway, including cars used for the transportation of its own fuel, was subject to the regulation of Congress. In *Interstate Commerce Commission* v. *C. & A. Ry. Co.*, 215 U. S. 479, it was held to extend to the distribution of coal cars to the shipper, so as to prevent discrimination. In *The Employers' Liability Cases*, 207 U. S. 463, 495, power to pass an act which regulated the relation of master and servant, so as to impose on the carrier, while engaged in interstate commerce, liability for the negligence of a fellow-servant, for which at common law there was no liability, and depriving such carrier of the common-law defense of contributory negligence save by way of reduction of damages, was upheld. In *Addyston Pipe Co.* v. *United States*, 175 U. S. 211, and *Northern Securities Co.* v. *United States*, 193 U. S. 197, it was held that this power of regulation extended to and embraced contracts in restraint of trade between the States.

It is obvious, from the many decisions of this court, that there is no such thing as absolute freedom of contract. Contracts which contravene public policy cannot be lawfully made at all, and the power to make contracts may in all cases be regulated as to form, evidence, and validity as to third persons. The power of government extends to the denial of liberty of contract to the extent of forbidding or regulating every contract which is reasonably calculated to injuriously affect the public interests. Undoubtedly the United States is a government of limited and delegated powers, but in respect of those powers which have been expressly delegated, the power to regulate commerce between the States being one of them, the power is absolute except as limited by other provisions of the Constitution itself.

Having the express power to make rules for the con-

duct of commerce among the States, the range of Congressional discretion as to the regulation best adapted to remedy a practice found inefficient or hurtful, is a wide one. If the regulating act be one directly applicable to such commerce, not obnoxious to any other provision of the Constitution, and reasonably adapted to the purpose by reason of legitimate relation between such commerce and the rule provided, the question of power is foreclosed. "The test of power," said Mr. Justice White, speaking for this court in the *Employers' Liability Cases*, cited above, "is not merely the matter regulated, but whether the regulation is directly one of interstate commerce, or is embraced within the grant conferred on Congress to use all lawful means necessary and appropriate to the execution of the power to regulate commerce."

That a situation had come about which demanded regulation in the public interest was the judgment of Congress. The requirement that carriers who undertook to engage in interstate transportation, and as a part of that business held themselves out as receiving packages destined to places beyond their own terminal, should be required as a condition of continuing in that traffic to obligate themselves to carry to the point of destination, using the lines of connecting carriers as their own agencies, was not beyond the scope of the power of regulation. The rule is adapted to secure the rights of the shipper by securing unity of transportation with unity of responsibility. The regulation is one which also facilitates the remedy of one who sustains a loss, by localizing the responsible carrier. Neither does the regulation impose an unreasonable burden upon the receiving carrier. The methods in vogue, as the court may judicially know, embrace not only the voluntary arrangement of through routes and rates, but the collection of the single charge made by the carrier at one or the other end of the route. This involves frequent and prompt settlement of traffic

balances. The routing in a measure depends upon the certainty and promptness of such traffic balance settlements, and such balances have been regarded as debts of a preferred character when there is a receivership. Again, the business association of such carriers affords to each facilities for locating primary responsibility as between themselves which the shipper cannot have. These well-known conditions afford a reasonable security to the receiving carrier for a reimbursement of a carrier liability which should fall upon one of the connecting carriers as between themselves.

But, it is said, that any security resulting from a voluntary agreement constituting a through route and rate is destroyed if the receiving carrier is not at liberty to select his own agencies for a continuance of the transportation beyond his own line. This is an objection which has no application to the present case. This action was for loss and damage arising from several distinct shipments to different places beyond the line of the plaintiff in error who was the initial or receiving carrier. The presumption from the absence of anything to the contrary in the record is that the routing was over connecting lines with whom the plaintiff in error had theretofore made its own arrangements and rate. This record presents no question as to the right of the initial carrier to refuse a shipment designated for a point beyond its own line, nor its right to refuse to make a through route or joint rate when such route and rate would involve the continuance of a transportation over independent lines. We, therefore, refrain from any consideration of the large question thus suggested. The shipments involved in the present case were voluntarily received by an initial carrier who undertook to escape carrier's liability beyond its own line by a provision limiting liability to loss upon its own line. This was forbidden by the Carmack amendment and any stipulation and condition in the

special receipt which contravenes the rule in question is invalid.

Reduced to the final results, the Congress has said that a receiving carrier, in spite of any stipulation to the contrary, shall be deemed, when it receives property in one State to be transported to a point in another involving the use of a connecting carrier for some part of the way, to have adopted such other carrier as its agent, and to incur carrier liability throughout the entire route, with the right to reimbursement for a loss not due to his own negligence. The conditions which justified this extension of carrier liability we have already adverted to. The rule of the common law which treated a common carrier as an insurer grew out of a situation which required that kind of security for the protection of the public. To quote the quaint but expressive words of Lord Holt, in *Coggs* v. *Bernard*, 2 Ld. Raymond, 909, when defending and appying the doctrine of absolute liability against loss not due to the act of God or the public enemy, "this rule," said he, "is a politick establishment contrived by the policy of the law for the safety of all persons, the necessity of whose affairs oblige them to trust these sort of persons that they may be safe in their ways of dealing."

If it is to be assumed that the ultimate power exerted by Congress is that of compelling coöperation by connecting lines of independent carriers for purposes of interstate transportation, the power is still not beyond the regulating power of Congress, since without merging identity of separate lines or operation it stops with the requirement of oneness of charge, continuity of transportation and primary liability of the receiving carrier to the shipper, with the right of reimbursement from the guilty agency in the route. That there is some chance that this right of recoupment may not be always effective may be conceded without invalidating the regulation. If the

power existed and the regulation is adapted to the purpose in view, the public advantage justifies the discretion exercised and upholds the legislation as within the limit of the grant conferred upon Congress. Touching the range of legislative discretion of the States in respect to occupations or trades which are affected by a public use, this court, in *Gundling* v. *Chicago*, 177 U. S. 183, 188, said:

"Unless the regulations are so utterly unreasonable and extravagant in their nature and purpose that the property and personal rights of the citizen are unnecessarily, and in a manner wholly arbitrary, interfered with or destroyed without due process of law, they do not extend, beyond the power of the State to pass, and they form no subject for Federal interference. As stated in *Crowley* v. *Christensen*, 137 U. S. 86, 'the possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community.' "

But it is said that the act violates the Fifth Amendment by taking the property of the initial carrier to pay the debt of an independent connecting carrier whose negligence may have been the sole cause of the loss. But this contention results from a surface reading of the act and misses the true basis upon which it rests. The liability of the receiving carrier which results in such a case is that of a principal for the negligence of his own agents.

In substance Congress has said to such carriers, "If you receive articles for transportation from a point in one State to a place in another, beyond your own terminal, you must do so under a contract to transport to the place designated. If you are obliged to use the services of independent carriers in the continuance of the transit, you must use them as your own agents and not as agents of the shipper." It is, therefore, not the case of making one pay the debt of another. The receiving

carrier is, as principal, liable not only for its own negligence, but for that of any agency it may use, although, as between themselves, the company actually causing the loss may be primarily liable.

In *Seaboard Air Line* v. *Seegers*, 207 U. S. 73, 78, legislation by the State of Georgia imposing a penalty on common carriers for failure to adjust damage claims within forty days was held to neither deny due process nor the equal protection of the law. Speaking by Mr. Justice Brewer, the court said of the reasonableness of the requirement and classification, that "the matter to be adjusted is one peculiarly within the knowledge of the carrier. It receives the goods and has them in its custody until the carriage is completed. It knows what it received and what it delivered. It knows what injury was done during the shipment and how it was done. The consignee may not know what was in fact delivered at the time of the shipment, and the shipper may not know what was delivered to the consignee at the close of the transportation. The carrier can determine the amount of the loss more accurately and promptly and with less delay and expense than anyone else, and for the adjustment of loss or damage to shipments within the State forty days cannot be said to be an unreasonably short length of time."

The conclusion we reach in respect to the validity of the amendment has the support of some well-considered cases. Among them we cite: *Smeltzer* v. *Railroad*, 158 Fed. Rep. 649; *Railroad* v. *Mitchell*, 91 N. E. Rep. 735; *Railroad* v. *Scott*, 118 S. W. Rep. 992.

The judgment included an attorney's fee taxed as part of the costs. The authority for this is supposed to be found in the eighth section of the act to regulate commerce of February 4, 1887, chap. 104, § 8 (24 Stat. at Large, p. 379, 382). The section reads as follows:

"That in case any common carrier subject to the pro-

visions of this act shall do, cause to be done, or permit to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs of the case."

But that section applies to cases where the cause of action is the doing of something made unlawful by some provision of the act, or the omission to do something required by the act, and there is a recovery "of damages sustained in consequence of any such violation of this act," etc. The cause of action in the present case is not for damages resulting from "any violation of the provisions of this act." True, the plaintiff in error attempted by contract to stipulate for a limitation of liability to a loss on its own line, and in this action has defensively denied liability for a loss not occurring on its own line. But the cause of action was the loss of the plaintiff's property which had been entrusted to it as a common carrier, and that loss is in no way traceable to the violation of any provision of the act to regulate commerce. Having sustained no damage which was a consequence of the violation of the act, the section has no application to this case.

The judgment was erroneous to this extent, and the provision for an attorney's fee is stricken out, and the judgment thus modified is

Affirmed.